Supreme Court of the United States

October Term, 1960.

No. .

NAVIOS CORPORATION,
UNIVERSE TANKSHIPS, INC.,

Petitioners,

v.

NATIONAL MARITIME UNION OF AMERICA,
SEAFARERS' INTERNATIONAL UNION
OF NORTH AMERICA,
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1291,
INTERNATIONAL MARITIME WORKERS UNION,
STEVE CARDULLO,
JAMES T. MOOCK,
RICHARD ASKEW,
LOUIS PARISE,
SHANNON J. WALL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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STEVE CARDULLO,
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LOUIS PARISE,
SHANNON J. WALL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in the above-entitled case on December 15, 1960.

CITATIONS TO OPINIONS BELOW.

The Opinion of the Supreme Court of Pennsylvania, dated and filed December 15, 1960, and a Dissenting Opinion, dated December 16, 1960, by Mr. Justice Bell, printed in Appendix A hereto, *infra*, page 31, are reported at 402 Pa. 325, 166 A. 2d 625. The Adjudication of November 7, 1960, of the Court of Common Pleas No. 1 of Philadelphia County, printed in Appendix B hereto, *infra*, page 59, and a Supplemental Adjudication of November 28, 1960, printed in Appendix C hereto, *infra*, page 70, are not yet reported.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania was dated and entered on December 15, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3)

QUESTIONS PRESENTED.

1. Does the Labor Management Relations Act, 1947, as amended, 29 U. S. C. § 141 et seq., deprive the courts of Pennsylvania of jurisdiction to entertain actions brought by the foreign owner and the foreign time charterer of a foreign-built, foreign-flag vessel temporarily in the Port of Philadelphia to enjoin and recover damages resulting from picketing and other activities of American labor unions intended to compel the foreign crew to join an American union and designate it as the crew's bargaining agent and to compel the foreign owner to negotiate and enter into a collective bargaining contract covering the wages and working conditions of the foreign crew, where the foreign crew is under foreign articles which provide that all rights of the parties shall be governed by the laws of the foreign country whose flag the vessel flies and is already represented by a foreign union which has an existing collective

bargaining agreement entered into abroad with the foreign owner?

2. In the circumstances stated, does the Labor Management Relations Act, 1947, govern the internal labor relations of such foreign-flag vessel and its foreign crew because the stock of the foreign corporation which owns the foreign-flag vessel is indirectly owned by American citizens, in view of (a) the long and well established principles of international maritime law that the flag of a vessel determines its nationality and the nation that has jurisdiction over its internal labor relations and (b) Article VI, Clause 2 of the United States Constitution and the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Liberia, dated August 8, 1938, 54 Stat. 1739, which provides in part that merchant vessels under the flag of either of the High Contracting Parties shall, both within the territorial waters of the other Party and on the high seas, be deemed to be vessels of the Party whose flag is flown?

CONSTITUTIONAL, TREATY AND STATUTORY PROVISIONS INVOLVED.

There are involved herein the following Constitutional, treaty and statutory provisions:

1. United States Constitution, Article VI, Clause 2, printed in Appendix D, *infra*, p. 72.

2. Treaty of Friendship, Commerce and Navigation with the Republic of Liberia, dated August 8, 1938, 54 Stat. 1739, Article XV, 54 Stat. 1745, printed in Appendix D, *infra*, p. 72.

3. Labor Management Relations Act, 1947, as amended, Section 7, 61 Stat. 140, 29 U. S. C. § 157, and § 8(b)(4), 73 Stat. 542, 29 U. S. C. § 158(b)(4), printed in Appendix D, *infra*, pp. 72-74.

STATEMENT OF THE CASE.

The Parties.

The petitioner (a plaintiff below), Universe Tankships, Inc. (hereafter "Universe") is a Liberian corporation, engaged in the worldwide ocean transportation of bulk commodities, including iron ore. Universe owns a large fleet of bulk cargo vessels and employs their crews. Many of its vessels, including ORE MONARCH, which is involved in this case, are time chartered to Navios Corporation, the other petitioner (hereafter "Navios"). Universe, which maintains a place of business at Hamilton, Bermuda (R. 159a), is a wholly-owned subsidiary of Oceanic Tankships, Inc., S. A., a Panamanian corporation, all of the stock of which is owned by United States citizens (R. 123a-125a).

Navios is a Liberian corporation engaged in the worldwide ocean transportation of bulk commodities, including iron ore (R. 139a, 153a). It employs a fleet presently comprising thirty-seven vessels, all of which are either time or voyage chartered (R. 140a). Consequently, it employs only executive, administrative and clerical personnel (R. 140a, 142a). They all live and work at Nassau, Bahamas, British West Indies, where Navios maintains its only office and place of business (R. 142a). Navios is a wholly-owned subsidiary of another Liberian corporation, Navigen Corporation, which, in turn, is a wholly-owned subsidiary of United States Steel Corporation (R. 153a).

The intervening plaintiff, Global Seamen's Union (hereafter "Global"), is a labor union organized and existing under the Trade Union Law, Law 3 of 1942, of the Cayman Islands, a British dependency (R. 106a, 217a-218a, 222a, 298a-299a). Global was certified by the Registrar of Trade Unions of the Cayman Islands as the collective bargaining representative of ORE MONARCH's crew (R. 224a-228a, 285a-286a), the great majority of whom are citizens and residents of the Cayman Islands (R. 96a-99a).

The respondents (defendants below) are two of the principal United States maritime unions, National Maritime Union of America (hereafter "NMU") and Seafarers' International Union of North America (hereafter "SIU"), and a joint affiliate, the International Maritime Workers Union (hereafter "IMWU"); Shannon J. Wall, a vice-president of NMU and Executive Director of IMWU; James T. Moock, a vice-president of International Longshoremen's Association (hereafter "ILA"); Local 1291 (the Philadelphia local of), ILA (hereafter "Local 1291"); Louis Parise and Steve Cardullo, Philadelphia representatives of NMU and SIU, respectively; and Richard Askew, President of Local 1291.

IMWU was formed in November, 1959, by NMU and SIU "to organize and represent all seamen employed aboard vessels whose flags are foreign to the United States of America and to improve and protect *their* wages, *their* hours of labor and *their* working conditions." (Emphasis supplied.) (R. 541a).

The Vessel.

ORE MONARCH, one of the largest and most modern ore carriers in the world, was built in Kure, Japan, in 1956 (R. 85a, 115a-116a), immediately registered under the laws of Liberia and has flown the Liberian flag ever since (R. 84a-86a, 511a, 513a). Pursuant to her charter, which was entered into abroad (R. 513a), she was placed at the disposal of Navios at Puerto Ordaz, Venezuela and at the direction of Navios has made voyages between South American ports and Newcastle-on-Tyne, England; Thousand Islands, Canada; and Mobile, Baltimore, Philadelphia and Morrisville, in the United States (R. 149a-150a). At the time she was immobilized by the events giving rise to this litigation, she was only temporarily at Pier 122, South, in the Port of Philadelphia for the purpose of discharging part of her cargo of Venezuelan iron ore (R. 110a, 117a, 143a).

The Crew.

All of the unlicensed crew of ORE MONARCH and all of her officers, with the exception of three engineers, are aliens. The great majority are citizens and residents of the Cayman Islands, a country that has a well-known maritime heritage (R. 96a-101a, 523a). As required by Liberian law, each officer aboard holds a license issued by the Deputy Commissioner of Maritime Affairs of Liberia (R. 86a-87a). The current ship's Articles, which were opened at Port-of-Spain, Trinidad, in January, 1960, provide that they are "Between Master and Seamen in the Merchant Service of Liberia"; that ". . . all rights of the parties hereto without limitation shall be governed by the Laws of the Republic of Liberia"; and that "any disputes arising between Master or owner and members of the crew regarding their agreement, wages and/or working conditions is (sic) to be settled by the proper competent representative of Liberia" (R. 523a). By rider attached to the Articles, the parties acknowledge that the wages, hours and working conditions aboard ORE MONARCH are governed by the current collective bargaining agreement between Universe and Global (R. 523a).

Union Picketing and Other Activities.

The picketing and other activities that caused this litigation are part of an IMWU campaign to attempt to organize and represent the foreign seamen on the foreign-flag ships owned by Universe and to attempt to change their wages and working conditions (R. 173a, 348a, 351a, 370a, 382a). The campaign began in November, 1959, months before ORE MONARCH was immobilized at Philadelphia by the unions' activities, and has been conducted with the assistance and collaboration of the other respondent unions and individuals (R. 541a).

IMWU began by distributing leaflets to the foreign seamen and soliciting their membership and authority to represent them in negotiating wages and working conditions on the foreign-flag vessels (R. 162a-166a, 538a, 539a). It

sought to induce the foreign seamen to abandon their allegience to and membership in the foreign union, Global, in violation of their foreign Articles (R. 523a) and the collective bargaining agreement between Global and Universe (R. 538a, 539a, R. 14a and 14b). It then made a series of efforts directed at the foreign employer, Universe, to induce and compel Universe to recognize IMWU as the collective bargaining representative of the foreign crews and to change the foreign seamen's wages, in violation of the collective bargaining agreement with Global and the Articles with the foreign seamen (R. 14a, 14b, 523a, 549a, 550a, 551a, 552a).

When IMWU's efforts did not succeed in persuading Universe to sign a collective bargaining agreement in disregard of its existing agreement with Global and its Articles, IMWU, NMU, SIU and ILA joined forces at Philadelphia, Baltimore and Mobile to immobilize Universe vessels in an attempt to force Universe to compel the foreign seamen employed by it to join IMWU.

Two or three days before October 21, 1960, Wall called a meeting with Askew, President of Local 1291, and Parrise, the Philadelphia NMU representative, in Askew's office to advise them of the action which is the subject of this litigation. Wall testified: "We simply gave them the sign and we told them what we were going to do and we assumed that they would have to take it up with their own people in their own way" (R. 332a-333a, 394a-397a).

On October 21, 1960, when ORE MONARCH arrived from Puerto Ordaz at Pier 122, South, Philadelphia, to discharge enough of her cargo of ore to lessen her draught sufficiently to enable her to negotiate the upper reaches of the Delaware River and complete her intended voyage to the Fairless Works at Morrisville, Pennsylvania, she was met by pickets, both ashore and in a small launch that cruised in the river off her berth (R. 193a). Almost immediately truck deliveries to the vessel were interrupted (R. 109a). Later the same day, after discharging opera-

tions had commenced, respondent Askew, President of Local 1291, and two ILA representatives and an NMU representative came onto the pier; the two ILA representatives boarded the vessel and ordered hatch tenders, members of Local 1291, who were directing cranes that were lifting the ore out of her hold, to stop working and go ashore (R. 110a-111a, 184a-188a, 196a-198a). The hatch tenders obeyed, discharging had to be halted and respondents' activities prevented its resumption (R. 189a-190a). IMWU has declared its purpose to be, by denying ORE MONARCH all services, including those of tugs, to prevent her from discharging her cargo and from leaving her berth (R. 391a). Other Universe vessels chartered to Navios have sailed to Philadelphia and have been prevented by respondents from unloading (R. 390a). Many other foreign vessels have been diverted from the Port of Philadelphia.

The Litigation.

As a result of the unions' activities and the resulting inability of Universe and Navios to carry out their contractual obligations and the resulting damages, Universe and Navios each brought a separate action in the Court of Common Pleas, Philadelphia County, Pennsylvania. Each complaint (R. 5a, 39a) alleged that the respondents by their picketing and other activities prevented the unloading of ORE MONARCH for the purpose of coercing her owner, Universe, to disregard an existing collective bargaining agreement providing the terms and conditions of employment of her crew and to compel the crew to abandon their allegiance to the incumbent union, Global, and to join one of the respondent unions against their will, a purpose which is unlawful in Pennsylvania. The complaints asked that the respondents be enjoined from interfering with the operation, management and internal economy and affairs of ORE MONARCH, from picketing ORE MONARCH and other vessels owned by Universe, and from causing others not to unload and service them. Each complaint asked that damages be awarded. The two actions were consolidated for

trial and during the trial the judge permitted Global, the incumbent union, to intervene as a party plaintiff in both actions.

The consolidated cases came on for hearing on October 28, 1960. On November 7, 1960, the court found that the picketing was peaceful; that the dispute was a labor dispute of a domestic nature; that exclusive jurisdiction of the controversy was vested in the NLRB and that the court had no jurisdiction. It therefore dismissed the complaints (R. 510a).

Petitioners appealed to the Supreme Court of Pennsylvania, and that court on December 15, 1960, affirmed the orders of the trial court and dismissed the complaints as to both injunctive relief and damages [1] on the ground that the National Labor Relations Board had exclusive primary jurisdiction of the dispute.

Statement Pursuant to Rule 23(f).

Federal Question to Be Reviewed.

The federal question of which this petition seeks review, *i.e.*, whether by federal preemption the Pennsylvania court was ousted of jurisdiction of the controversy, was raised in the Court of Common Pleas of Philadelphia County by paragraph 1 of Preliminary Objections filed by respondents:

> "1. The complaint alleges conduct which, if true, may be violative of the Labor Management Relations Act of 1947, 29 U. S. C. A. 158(b)(4), and, there-

1. The appeals were taken pursuant to a Pennsylvania statutory provision for immediate and expeditious review, § 15, Act of June 2, 1937, P. L. 1198, 43 P. S. § 206o, from the part of the trial judge's Adjudication which denied requests for a preliminary injunction. Subsequently, after the appeals were decided, exceptions that had been filed to the rest of the trial judge's Adjudication, which finally disposed of the cases, were dismissed "as moot" in view of the fact that the appellate court had itself dismissed the complaints. The exceptions mentioned in the Opinion of the Supreme Court of Pennsylvania (Appendix A, *infra*, p. 32) are those thus dismissed as moot.

fore, exclusive jurisdiction to adjudicate such claim lies with the National Labor Relations Board, 29 U. S. C. 160." (R. 55a)

At the conclusion of the trial both petitioners posed the same question by identical Requests for Conclusions of Law (Navios: No. 2, R. 475a; Universe: No. 2, R. 487a); they asked the trial judge to find that:

"The Court is not deprived of jurisdiction of the subject matter of the action by the Act of July 5, 1935, C. 372, 74th Cong., 1st Sess., 49 Stat. 449, as re-enacted by the Act of June 23, 1947, Title I, c. 120, 80th Cong., 1st Sess. 61 Stat. 137, known as the Labor Management Relations Act, 1947."

The court instead made the following Conclusions of Law:

"3. Exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board.

4. This Court has no jurisdiction to consider the merits of the controversy." (R. 510a)

The orders entered by the court included the following:

"2. Preliminary Objection No. 1 of the Defendants is dismissed as moot, at this time, it having been disposed of in this Adjudication and the Decree Nisi." (R. 510a)

The federal question of which review is sought was raised by both petitioners in a joint brief filed with the Supreme Court of Pennsylvania, which stated as one of the questions involved in their appeals:

"2. Did not the Court below have jurisdiction to enjoin Appellee labor unions from picketing a foreign flag vessel temporarily in American waters in an attempt to interfere with the internal labor relations between her alien crew and alien owner?" (Brief for Appellants, p. 1)

The brief argued that the Labor Management Relations Act, 1947, did not apply, but the majority of the court, like the trial judge, were of the opinion, that ". . . exclusive primary jurisdiction of the dispute involved in these appeals is in the National Labor Relations Board" because "the picketing and other activities of the defendants (respondents) are either protected by Section 7 of the National Labor Relations Act . . . . or constitute an unfair labor practice under the standards of Section 8(b) of the same statute." (Appendix A, *infra*, pp. 43, 36).

REASONS FOR GRANTING THE WRIT.

Stated summarily the reasons for granting the writ are as follows:

1. The decision of the Supreme Court of Pennsylvania conflicts with the decision of this Court in *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957), and misinterprets and misapplies the decision of this Court in *Marine Cooks & Stewards, A. F. L. et al. v. Panama Steamship Co., Ltd. et al.*, 362 U. S. 365 (1960).

2. The decision of the Supreme Court of Pennsylvania is contrary to long established principles of international maritime law consistently applied by this Court and of needful uniformity.

3. The decision of the Supreme Court of Pennsylvania violates Article XV of the Treaty of Friendship, Commerce and Navigation with the Republic of Liberia, dated August 8, 1938.

4. The decision of the Supreme Court of Pennsylvania impinges on important national defense and foreign relations policies. It affects not merely ORE MONARCH but a vast fleet of foreign flag vessels in which Americans are interested.

A detailed discussion of the reasons for granting the writ follows.

1. The Decision of the Supreme Court of Pennsylvania Conflicts With the Decision of This Court in Benz v. Compania Naviera Hidalgo, S. A., 353 U. S. 138 (1957), and Misinterprets and Misapplies the Decision of This Court in Marine Cooks & Stewards, A. F. L., et al. v. Panama Steamship Co., Ltd., et al., 362 U. S. 365 (1960).

First and foremost among the reasons for granting the writ is that the holding of the Supreme Court of Pennsylvania that the Labor Management Relations Act, 1947, applies to a controversy resulting from picketing and other activities conducted by American unions for the purpose of attempting to organize and represent foreign seamen serving under foreign articles aboard a foreign-owned, foreign-flag vessel temporarily in an American port directly and irreconcilably conflicts with the decision of this Court in *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957). That case held squarely that "the . . . Act . . . (does not apply) to a controversy involving damages resulting from picketing of a foreign ship operated entirely by foreign seamen under foreign articles while the vessel is temporarily in an American port". See 353 U. S. 138-139. The Court considered the fundamental problem to be to determine Congressional intent as to the scope of the Act and expressed its conclusion in the following language:

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. In fact, no discussion in either House of Congress has been called to our attention from the thousands of pages of legislative history that indicates in the least that Congress intended the coverage of the Act to extend to circumstances such as those posed here. It appears not to have even oc-

curred to those sponsoring the bill. The Report made to the House by its Committee on Education and Labor and presented by the co-author of the bill, Chairman Hartley, stated that 'the bill herewith reported has been formulated as a bill of rights both for *American* workingmen and for their employers.' The report declares further that because of the inadequacies of legislation 'the *American* workingman has been deprived of his dignity as an individual,' and that it is the purpose of the bill to correct these inadequacies. (Emphasis added.) H. R. Rep. No. 245, 80th Cong., 1st Sess. 4. What was said inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions."[2]

The Pennsylvania court should have treated *Benz* as controlling this case because in all material respects the circumstances are identical and it therefore raises precisely the same issue decided in *Benz*. Here, just as in *Benz*, the vessel is owned by a foreign corporation, is registered under the laws of Liberia and is crewed by foreign seamen who signed foreign articles abroad and hold their licenses, where required, from a foreign government. In both cases the foreign articles called for a voyage commencing abroad

2. The NLRB, in its most recent decision concerning the territorial scope of its jurisdiction, *West India Fruit and Steamship Company, Inc.*, 130 NLRB No. 46 (Feb. 16, 1961), has clearly refused to observe the boundaries established by the Court in the language quoted in the text from *Benz*. Thus, the NLRB dismissed cases which deny extraterritorial jurisdiction to the National Mediation Board with the statement that ". . . the Railway Labor Act . . . unlike the NLRA, is expressly limited to American territory." *West India, supra*, at 10. The Board, moreover, expressly asserts that it has jurisdiction over "acts even occurring in foreign territory when such acts have a direct effect on trade between the United States and foreign countries, *Ibid*, and concludes, "In sum, we find no merit in the argument that we are without jurisdiction because of extraterritorial considerations." *Id.* at 12. The Board had to overrule its own prior decisions in *Pennsylvania Greyhound Lines, et al.*, 13 NLRB 28 (1939), and *Detroit & Canada Tunnel Corporation*, 83 NLRB 727 (1949), to come to the quoted conclusions in opposition to the command of *Benz*.

and provided for wages and conditions of employment prescribed by and subject to the control (or agreement) of foreign authority; in *Benz*, the British Maritime Board, and here, the competent authorities of Liberia and a foreign labor union registered and certified by the foreign government of the country in which the majority of the crew are domiciled. Most important of all, however, is the identity of the aims and purposes of the American unions in the two cases: In both they sought, not to further the interests of their own American members, but to represent and bargain for foreign workmen employed on foreign vessels.

Aside from the fact that ORE MONARCH employed three licensed engineers who are Americans among an otherwise foreign crew of forty-eight (R. 100a), the facts in this case can be distinguished from those in *Benz* only in that (1) the stock of the foreign corporation that owns the foreign-built, foreign-flag ORE MONARCH is owned by citizens of the United States (R. 123a-125a, 490a, 503a), and (2) here the American unions have unasked taken it upon themselves to attempt to organize and represent the foreign crew to effect changes in their wages and working conditions and have conducted their picketing and other activities for that purpose, whereas in *Benz* the American unions had been designated collective bargaining representative by the crew and were picketing the vessel at their request in an attempt to change wages and working conditions.

The distinctions between the two cases are clearly distinctions without differences.

The presence of three Americans, only one of whom was not a member of the foreign union and all of whom were in any event supervisors not covered by the Labor Management Relations Act, 1947, among an otherwise foreign crew of forty-eight, cannot confer jurisdiction on the NLRB of the internal labor relations of ORE MONARCH any more than the presence of a few Americans among the crew of QUEEN MARY would confer jurisdiction on the Board of her labor relations—an unthinkable result.

The activity of the American unions in taking it upon themselves to attempt to represent the foreign crew to change their wages and working conditions, which had been negotiated by the foreign union designated by the crew as their representative and incorporated in the ship's Articles, cannot confer jurisdiction on the NLRB when the intent of Congress in enacting the Labor Management Relations Act, 1947, was not to "change the contractual provisions made by the" foreign employer and foreign employees, but was to limit its application to "American employers and employees". As the Court said in *Benz*:

> "We cannot read into the Labor Management Relations Act an intent to change the contractual provisions made by these parties. For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the courts." (353 U. S. 138, 146-147)

Finally, as demonstrated fully below,[3] the fact that the shareholders of the foreign corporate parent of the foreign corporate owner of ORE MONARCH are, unlike the ultimate owners of RIVERIA in *Benz*, Americans, can likewise furnish no basis for distinguishing the cases.

The only differences between this case and *Benz* are, therefore, all immaterial and the decision of the Pennsylvania Court thus cannot possibly be reconciled with *Benz*.

The decision below not only conflicts with *Benz*, but misinterprets and misapplies the decision of this Court in *Marine Cooks & Stewards, A. F. L., et al. v. Panama Steamship Co., Ltd.*, 362 U. S. 365 (1960), which the Pennsylvania

3. See Sections 2 and 3, pp. 19, 23, *post*.

court thought controlling. *Marine Cooks* is not controlling or even pertinent because it involved an entirely different and unrelated legal question, it in no way affected or modified *Benz,* and it arose in circumstances which cannot be likened to those of this case.

In *Benz* this Court decided that the National Labor Relations Act, 1947, did not by preempting the field foreclose a suit for damages based on state law. In *Marine Cooks,* on the other hand, this Court was concerned with an action for an injunction in a federal court and this Court held merely that the Norris-LaGuardia Act deprived the federal court of jurisdiction to issue an injunction.

Thus, *Marine Cooks* involved, not the Labor Management Relations Act, as this case does, but the Norris-LaGuardia Act and the Court both carefully differentiated the two statutes, restricting the applicability of its holding to the latter, and distinguished and reaffirmed *Benz* on the basis of the differing statutory provision. It stated that the sole question in *Marine Cooks* was whether "the Norris-LaGuardia Act deprives the United States court of jurisdiction to issue (an) injunction" to restrain an American union's picketing of a foreign-flag vessel to protest loss of livelihood to foreign-flag vessels with substandard wages or working conditions. See 362 U. S. 365, 368, 372. The Court noted the difference between the purposes of the two statutes, remarking that "Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not, as it passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes," and carefully restricted its decision to the former. It said, 362 U. S. 372:

> "There is not presented to us here, and we do not decide, whether the picketing of petitioner was tortious under state or federal law. All we decide is that the Norris-LaGuardia Act deprives the United States court of jurisdiction to issue the injunction it did under the circumstances shown."

In view of the restrictive scope of its decision in *Marine Cooks*, this Court rejected *Benz* as a precedent applicable to the situation before it there and, in effect, reaffirmed its decision in *Benz*. It said, 362 U. S. 368:

> "The question in the *Benz* case was whether the Labor Management Relations Act of 1947 governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters. The *Benz* case decided that the Labor Management Relations Act had no such scope or coverage and that it accordingly did not pre-empt the labor relations field so as to bar an action for damages for unlawful picketing under Oregon law. Nothing was said or intimated in *Benz* that would justify an inference that because a United States District Court has power to award damages in state cases growing out of labor disputes it also has power to issue injunctions in like situations. That question—of United States courts' jurisdiction to issue injunctions in cases like this—is to be controlled by the Norris-LaGuardia Act."

Thus, *Marine Cooks* is not legally pertinent to this case and left *Benz* entirely unimpaired as a precedent.

Marine Cooks, moreover, involved circumstances basically different from those of this case. A review of the record there (Transcript of Record, pp. 24-27, 36-37; Petition for Writ of Certiorari, pp. 4-5; Brief of Petitioners, p. 16; Petitioners' Reply Brief, pp. 4-5, 362 U. S. 365, 367) will show that the American union was not attempting to organize and represent foreign seamen, as the American unions are in this case, but was protesting the loss to foreign seamen of jobs formerly occupied by its members as a result of the transfer of the SS NIKOLAS from American to Liberian registry and her success, made possible by the employment of foreign seamen consequent on her transfer, in underbidding American-flag vessels on which the union members

served in the Pacific coastwise trade. The Court explicitly took cognizance of the factual difference between *Marine Cooks* and *Benz;* in footnote 12, Opinion, at 371, it said:

> "Unlike the situation in the *Benz* case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in *Benz.*"

The same difference exists between *this* case and *Marine Cooks* and the Pennsylvania court's reliance on the quoted footnote 12 flies in the face of overwhelmingly strong evidence proving the difference. The constitutionally stated object of IMWU, the literature it distributed, the promises it made to the Caymanians aboard ORE MONARCH, the letters it sent to Universe and the testimony of its chief representative, Wall, show conclusively that the avowed aim and purpose of IMWU's picketing and other activities was to organize and represent the foreign seamen employed aboard ORE MONARCH and to attempt on their behalf to change their wages and working conditions. The record, moreover, is barren of evidence that American-flag vessels employing American seamen have been engaged in the trade in which ORE MONARCH has been engaged. It cannot possibly be found, therefore, that IMWU was "not interested in the internal economy (wages and working conditions) of (ORE MONARCH), but rather . . . in preserving job opportunities for themselves in this country." In short, *Marine Cooks* is not only legally irrelevant, but factually fundamentally different; the Pennsylvania court's reliance on it was, therefore, utterly misplaced.

Finally, it should be noted that the Pennsylvania court's decision conflicts with two recent decisions by courts of

other states. The courts of New York and Louisiana, in *Incres Steamship Co., Ltd. v. IMWU, et al.*, 11 A. D. 2d 177, 202 N. Y. S. 2d 692 (1st Dept. 1960), and *Fruit Dispatch Co. v. NMU, et al.*, Civil District Court, Parish of New Orleans, La., No. 384-453, Docket No. 5, October, 1960, respectively, have taken jurisdiction and issued injunctions in circumstances like those of this case.

Thus, there clearly is a need for authoritative elucidation of the interrelation of *Benz* and *Marine Cooks* so that the scope of the Labor Management Relations Act, 1947, and its impact on the foreign commerce of the United States in an area of great importance to our foreign relations, the shipping industry and industry generally will be firmly established. Issuance of the writ of certiorari is clearly warranted on this score alone.

2. The Decision of the Supreme Court of Pennsylvania Is Contrary to Long Established Principles of International Maritime Law Consistently Applied by This Court and of Needful Uniformity.

The decision of the Supreme Court of Pennsylvania contravenes settled principles of international maritime law "of impressive maturity and universality", [see *Lauritzen v. Larsen*, 345 U. S. 571, 581 (1953)], consistently applied by this Court and of needful uniformity throughout the country. The rules are that the nationality of a vessel is determined by her registration and flag and that the country of the vessel's nationality is entitled to regulate her internal economy and discipline. Thus in *Wildenhus' Case*, 120 U. S. 1, 12 (1887), this Court said:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it

> came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require."

Further affirming the principle involved, this Court stated in *Lauritzen v. Larsen, supra,* at 584-585:

> "Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. *The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state.*"
>
> • • •
>
> "It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law . . ." (Emphasis supplied.)

To the same effect see *Romero v. International Terminal Operating Co.*, 358 U. S. 354 (1959), where this Court held that a Spanish seaman on a Spanish flag vessel could not recover under the Jones Act for an injury which occurred on board the vessel in a United States port.

It is unquestioned that ORE MONARCH is properly registered under the laws of Liberia, is subject to and complies with the laws of that country in its operation and that the

crew of the vessel is engaged under Liberian articles by which they have agreed to subject themselves to the laws of Liberia in matters of their employment. Like all vessels engaged in international trade ORE MONARCH does visit and is subject under her charter to sail to various parts of the world. She has been and, under her charter, at any time may be assigned to trade which does not touch the ports of the United States.

The application of American laws to the internal labor relations of ORE MONARCH, continuously overriding the law of her flag on the high seas and in all ports of the world, in contravention of accepted principles of international maritime law would require a clear affirmative expression of the intention of Congress which is not present in the general language of the Labor Management Relations Act, 1947. See *Benz v. Compania Naviera Hidalgo, S. A., supra*, at 147; *Foley Bros. v. Filardo*, 336 U. S. 281 (1949); *Lauritzen v. Larsen, supra*, at 581-582; *Romero v. International Terminal Operating Co., supra*, at 382.

In *Lauritzen v. Larsen, supra*, this Court said at 581-582:

> "Congress could not have been unaware of the necessity of construction imposed upon courts by such generality of language and was well warned that in the absence of more definite directions than are contained in the Jones Act it would be applied by the courts to foreign events, foreign ships and foreign seamen only in accordance with the usual doctrine and practices of maritime law.
>
> "Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a mul-

> tiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations."

In several recent lower-court decisions involving the right of foreign seamen on foreign-flag vessels to recover wages, the courts have held that the law of the flag applies, not the laws of the country of the owner.

In *Evangelinos v. Andreavapor Cia, NAV. S. A.*, 162 F. Supp. 520 (S. D. N. Y. 1958), the chief engineer of a vessel sued in a United States district court to recover vacation and overtime pay and wages under 46 U. S. C. §§ 596, 597. The vessel was registered under the laws of Liberia, but the owner-corporation was Panamanian. The seamen claimed the law of Panama governed and the owner claimed the law of the flag applied. The court, although taking jurisdiction of the controversy as provided in 46 U. S. C. § 597, which expressly provides that it "shall apply to seamen on foreign vessels while in harbors of the United States and" that "the courts of the United States shall be open to such seamen for its enforcement," said, Opinion, p. 521:

> "The general rule as to what law governs matters of the 'internal economy' of a ship, such as wages, is that the law of the flag controls. In reviewing the major 'contact points' to be considered in arriving at a choice of law in maritime cases Mr. Justice Jackson said: 'Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. * * * Nationality is evidenced to the world by the ship's papers and its flag.

> • • • It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law.' *Imuritzen v. Larsen*, 1953, 345 U. S. 571, 73 S. Ct. 921, 929, 97 L. Ed. 1254."

To the same effect are *Monteiro v. Sociedad Mar. San Nicolas, S. A.*, 175 F. Supp. 1 (S. D. N. Y. 1959); *Grivas v. Alianza Compania*, 150 F. Supp. 708 (S. D. N. Y. 1957) and *McQuade v. Compania de Vapores San Antonio, S. A.*, 131 F. Supp. 365 (S. D. N. Y. 1955).

Thus, long established principles of international maritime law, affecting the "delicate field of international relations" (See *Benz v. Compania Naviera, supra*, at 147) and therefore demanding uniform interpretation and application throughout the country, require the reversal of the decision below which treats a Liberian-flag vessel as an American vessel and asserts that a statute designed to regulate the labor relations of American workingmen should govern the internal labor relations and discipline of that foreign ship. ". . . (A)n Act of Congress ought never to be (so) construed to violate the law of nations if any other possible construction remains." See *Schooner Charming Betsy*, 2 Cranch. 64, 118 (1802).

The determination of whether the decision below is correct in view of the applicable principles of international maritime law furnishes another important reason for granting the writ.

3. The Decision of the Supreme Court of Pennsylvania Violates Article XV of the Treaty of Friendship, Commerce and Navigation With the Republic of Liberia, Dated August 8, 1938.

In view of the incontestability of the nationality of a vessel under international maritime law and the settled rule of that law that the internal economy of a vessel is governed by the laws of the nation of registry, the appli-

cation by the Pennsylvania court of the Labor Management Relations Act, 1947, to the internal labor relations of ORE MONARCH was tantamount to a failure to apply and give effect to an important provision of the Treaty of Friendship, Commerce and Navigation between the United States and Liberia, dated August 8, 1938, and to Article VI, Clause 2 of the Constitution of the United States, which requires all courts to accord such treaties binding effect.

Article XV of the Treaty with Liberia, which is identical with or substantially like provisions in a number of such treaties which the United States has entered into with other friendly foreign nations, e.g., the Netherlands,[4] Honduras,[5] the Federal Republic of Germany,[6] and Japan,[7] reads as follows:

> "Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be vessels of the Party whose flag is shown."

The majority opinion of the Pennsylvania Supreme Court not only completely ignores the quoted treaty provision, but contravenes its meaning and purpose by treating ORE MONARCH as an American ship and holding that her internal labor relations are subject to an American statute. The court below went behind the Liberian nationality guaranteed by the Treaty because of what it termed the "American connections involved." The court's principal reliance appears to have been on the facts that the ultimate beneficial ownership of the vessel and the charterer is American

4. 8 U. S. T. 2043, T. I. A. S. No. 3942 (March 27, 1956).
5. 45 Stat. 2618 (1929), T. I. A. S. No. 764.
6. 7 U. S. T. 1839, T. I. A. S. No. 3593 (October 29, 1954).
7. 4 U. S. T. 2063, T. I. A. S. No. 2863 (April 2, 1953).

and that the ship happened to be in American waters engaged in carrying foreign cargo to an American destination when the unions' activities occurred. It is obvious, however, that, under the Treaty with Liberia, as under international maritime law, ORE MONARCH and all vessels flying the Liberian flag must be treated as Liberian in all respects, regardless of their ownership or the nationality of their charterer and regardless of their presence "within the territorial waters" of the United States.

In the absence of "an affirmative intention of Congress clearly expressed" (See *Benz v. Compania Naviera, supra*, at 147), it must be concluded that Congress intended that in the application of the Labor Management Relations Act, 1947, "privately owned vessels under the flag of (Liberia) shall . . . be deemed vessels of" Liberia within and without the waters of the United States and for all purposes.

As stated in *In Re Chin A On*, 18 Fed. 506, 507 (D. Cal. 1883):

> "Before we can impute to Congress an intention to violate an important article of a treaty with a foreign power, that intention must be clearly and unequivocally manifested, and the language of the law, which is supposed to constitute the violation, must admit of no other reasonable construction. . . ."

See also *United States v. Forty-Three Gallons of Whiskey*, 108 U. S. 491, 496 (1883); *Edye v. Robertson (Head Money Cases)*, 112 U. S. 580, 598-599 (1884).[8]

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8. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), relied on by the Supreme Court of Pennsylvania, is inapposite. *Garmon* belongs to a class of cases, among which *Guss v. Utah Labor Board*, 353 U. S. 1 (1957), is most cited, which deal with the allocation of jurisdiction over labor disputes involving workingmen of this country. *Benz v. Compania Naviera, supra*, holds that where the National Labor Relations Board has no jurisdiction, as over foreign seamen, the state courts have jurisdiction to grant a remedy without reference to the National Labor Relations Board.

Under the Treaty as well as under international maritime law, which the Treaty codifies, aspects of the internal labor relations of a foreign-flag vessel such as wages and working conditions are subject to the laws of the country of the flag and not of that of the owner of the vessel. Thus in *McQuade v. Compania de Vapores San Antonio, S. A., supra*, where the claimant in a suit concerning wages and other working conditions contended that the law to be applied was that of the country of the owner of the vessel and not that of the flag, the court said, Opinion at 366:

> "According to the plain terms of this treaty the appropriate law applicable to the internal order of the vessel is the law of the flag. Seamen's contracts are treated as matters of internal order or economy. See *Taylor v. Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597.
>
> "In the absence of treaty the result that the law of the flag controls seems to be called for under the conflict of laws principles recognized in this country as applied to maritime causes."

The failure of the Pennsylvania Supreme Court to give effect to Article XV of the Treaty of Friendship, Commerce and Navigation between the United States and Liberia, and, indeed, its denial of the plain meaning and purpose of that provision, emphasizes the need for an authoritative exposition of its significance and effect in an area of great national consequence in which there is a frequently recurring pattern of union activities against Liberian and other foreign-flag vessels.[9] The need for that exposition furnishes another important reason for granting the writ.

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9. See, *e.g.*, *Afran Transport Co. v. N. M. U.*, 169 F. Supp. 416 (S. D. N. Y. 1958); *Benz v. Compania Naviera*, *supra*, p. 12; *Incres Steamship Co., Ltd. v. IMWU, et al.*, *supra*, p. 10; *Fruit Dispatch Co. v. NMU*, *supra*, p. 19.

4. The Decision of the Supreme Court of Pennsylvania Impinges on Gravely Important National Defense and Foreign Relations Policies. It Affects Not Merely Ore Monarch But a Vast Fleet of Foreign-Flag Vessels in Which Americans Are Interested.

Finally, the opinion of the Pennsylvania court impinges on and if adopted as a precedent would adversely affect an important foreign relations policy. Because of the well-known fact, moreover, that a large part of the merchant fleet ultimately beneficially owned by citizens of the United States is registered under the laws of Liberia and other friendly foreign countries, in circumstances such that the vessels involved are subject to effective American control and thus constitute a reserve merchant fleet available to the United States in the event of a national emergency, the decision below affects a gravely important national defense policy and vast private economic interests as well. In view of the avowed aims and purposes of IMWU, moreover, the problem presented is bound to be a recurring one and thus calls urgently for authoritative resolution by this Court.

Although it is not the purpose of this petition to discuss the merits of other pending cases, the importance of the issues and the economic significance of this case can be demonstrated by reference to *West India Fruit and Steamship Co., Inc.*, decided by the NLRB on February 16, 1961, see footnote 2, *supra*, p. 13, and certain companion cases presently pending before the Board.[10] Those cases involve the very question of jurisdiction of the NLRB decided by the Pennsylvania Supreme Court in the present

10. The companion cases are *Peninsular & Occidental Steamship Company and Seafarer's International Union* (Case No. 12-CA-255); *Eastern Shipping Corporation & Seafarer's International Union* (Case No. 12-RC-415); *United Fruit Company and National Maritime Union of America* (Case No. 2-RC-10379).

case and the importance of the jurisdictional question is demonstrated by the fact that at the request of the Secretary of Defense and the Under Secretary of State, the Attorney General of the United States petitioned for and was granted leave on behalf of the United States to file a brief as amicus urging that the Board was without jurisdiction. Letters addressed to the Attorney General by the Under Secretary of State and the Secretary of Defense, dated respectively October 27, 1960, and October 26, 1960, requesting the Attorney General to intervene are printed as Appendix A and Appendix B, respectively, to the Brief of the United States, Intervenor as Amicus and are appended to this petition as Appendix E, *infra*, p. 75, and Appendix F, *infra*, p. 80, respectively.

The letters of the Under Secretary of State and the Secretary of Defense make clear that the decision of the Pennsylvania court is contrary to the settled international policy of the United States in relation to the recognition of registration as the indicium of nationality of vessels and is contrary to a series of treaties negotiated in pursuance of that policy. They make clear similarly that the decision, if generally adopted as a precedent, particularly by the NLRB, would have the effect of causing the loss to the nation of a vitally important national defense asset by causing the owners of almost half of the vessels of all ages and of approximately five-sixths of the most modern vessels available to the United States in the event of an emergency to transfer them to registry such that their availability would terminate. Thus the national interests presented by this case and the magnitude of the economic interests involved are clear and reinforce the important legal issues presented as reasons for granting the writ.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT.

NAVIOS CORPORATION, *Appellant*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff, Appellant*, *v.* NATIONAL MARITIME UNION OF AMERICA, et al.	Nos. 147, 148, 155, 156 January Term, 1961 Navios Corporation—Appellant at No. 147. Universe Tankships, Inc., —Appellant at No. 148. Global Seamen's Union—Appellant at Nos. 155 and 156.
UNIVERSE TANKSHIPS, INC., *Appellant*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff, Appellant*, *v.* NATIONAL MARITIME UNION OF AMERICA, et al.	Appeals from Identic Orders of the Court of Common Pleas No. 1 of Philadelphia County at Nos. 2065 and 2068 September Term, 1960.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

Filed: December 15, 1960.

JONES, *C. J.*

These appeals arise out of suits instituted by the plaintiffs seeking to enjoin the defendant unions and certain of their officers from picketing or in any other man-

ner interfering with the unloading and servicing, at the Port of Philadelphia, of a ship flying a Liberian "flag of convenience."

The matter first came before the court below on the plaintiffs' motions for a preliminary injunction. After a full hearing, the learned chancellor refused a preliminary injunction and contemporaneously entered decrees *nisi* dismissing the complaints, to which exceptions were subsequently filed and still remain undisposed of. Accordingly, final decrees have not been entered. The present appeals were promptly taken by the plaintiffs, pursuant to Section 15 of the Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, 43 P. S. §206o, from the court's refusal of a preliminary injunction; and upon application of counsel, we forthwith advanced the appeals for argument, as contemplated by the Act.

The fundamental basis for the chancellor's action in denying the plaintiffs injunctive relief is that exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board. Whether that is so, under the facts of the case, is the legal problem to which we shall now address ourselves.

The plaintiffs, Universe Tankships, Inc., and Navios Corporation, are respectively the owner and time charterer of a bulk cargo vessel, the SS Ore Monarch, which transports iron ore from Puerto Ordaz, Venezuela, to the Fairless Works of the United States Steel Corporation at Morrisville, Pennsylvania. Because of the limited depth of the Delaware River, above Philadelphia, which the vessel necessarily must ply in order to reach Morrisville, she unloads a portion of her cargo at Philadelphia to lessen her draft before attempting to proceed upstream for delivery of the balance of the cargo at Morrisville. The SS Ore Monarch arrived at Philadelphia on October 21, 1960, laden with a cargo of iron ore from Puerto Ordaz for the United States Steel Corporation at Morrisville and was berthed at Pier 122 South on the Delaware River at Philadelphia for the partial unloading operation above mentioned.

All of the SS Ore Monarch's crew of forty-eight men are, with three exceptions, aliens and all, except for the Captain and Chief Engineer, are members of the Global Seamen's Union, an unincorporated association registered in the Cayman Islands, British West Indies, with which organization Universe Tankships, Inc., the owner of the vessel, has an existing labor agreement.

On October 26, 1960, Universe Tankships, Inc., and Navios Corporation filed complaints in the Court of Common Pleas of Philadelphia County against the National Maritime Union of America, the Seafarers' International Union of North America, the International Maritime Workers' Union, the International Longshoremen's Association, Local 1291, and certain officers of these unions for a temporary and, thereafter, a permanent injunction restraining the defendants from causing the SS Ore Monarch to be picketed or in any way interfering with the operation, management, internal economy and affairs of the SS Ore Monarch or any vessel owned or chartered by the plaintiffs; or in any manner inducing others to refuse to service such vessels. The plaintiffs also demanded damages.

The complaints alleged, inter alia, that, at or about the time that the SS Ore Monarch berthed at Pier 122 South, the defendants caused two persons to picket in front of the entrance to the pier carrying signs bearing the legend, "AMERICAN MARITIME UNIONS PROTEST UNFAIR LABOR PRACTICES OF 'ORE MONARCH' ", and also caused a small boat carrying pickets with similar signs to cruise in the vicinity of the SS Ore Monarch, the picketing activity having continued up to the institution of the suits; that the defendants caused the pickets to prevent, or attempt to prevent, deliveries of supplies and victuals to the SS Ore Monarch by threats of force and intimidation to drivers of trucks undertaking to make such deliveries; that at approximately 8 P. M. on October 21, 1960, while the SS Ore Monarch was discharging her cargo, two agents of the International Longshoremen's Association, Local 1291, boarded the SS

Ore Monarch and ordered members of Local 1291, then working at the hatches of the ship, to cease working, the orders being promptly obeyed; that the unloading operations have not been resumed since that time; that the purpose of the above mentioned and similar actions of the defendants is to procure the breach of the labor agreement existing between Universe Tankships, Inc., and Global Seamen's Union, and to coerce Universe Tankships, Inc., to compel or require the members of its ship's crew to join the International Maritime Workers' Union; that the aforesaid actions of the defendants have prevented and are preventing the unloading, bunkering and victualling of the SS Ore Monarch, thereby causing the plaintiffs to suffer irreparable injury.

In the course of the hearings, the court granted Global Seamen's Union leave to intervene as a party plaintiff; and on November 4, 1960, the intervenor filed its separate complaint alleging substantially the same facts as the complaints filed by Universe Tankships, Inc., and Navios Corporation. Global's complaint asked, in addition, that the defendants be enjoined from inducing members of Global Seamen's Union from disavowing their relationship therewith and from compelling the employers of the SS Ore Monarch's crew to breach their contract with Global Seamen's Union and from entering into a contract with Universe Tankships, Inc., while the latter's contract with Global Seamen's Union endured. Otherwise, Global's complaint sought the same injunctive relief as was prayed for by Universe Tankships, Inc. Global did not, however, demand damages.

The facts adduced at the hearings in the court below further disclosed that the SS Ore Monarch was built in 1956 at Kure City, Japan, and was registered in New York on January 9, 1957, as a Liberian vessel, which, however, has never been to Liberia. Nor has the ship ever been registered by any other country or flown any other flag than that of Liberia.

Universe Tankships, Inc., is a Liberian corporation, wholly owned by Oceanic Tankships, S. A., a Panamanian corporation, which, in turn, is wholly owned by D. K. Ludwig and W. W. Wagner, both of whom are American citizens.

Navios Corporation is a Liberian corporation, wholly owned by Navigen Corporation, a Liberian corporation also, which, in turn, is wholly owned by the United States Steel Corporation, and is registered in the Bahama Islands with its home office in Nassau.

The Cayman Islands are a British possession located approximately 250 miles south of Cuba in the British West Indies. Their population is between six and seven thousand inhabitants.

Global Seamen's Union was registered in the Cayman Islands on June 1, 1959, under the provisions of Trade Union Law 3 of 1952. Apparently it is the only union that has ever been registered in the Cayman Islands. The registration took place when a man who said that he was the Secretary-Treasurer of the Global Seamen's Union submitted a list of officers of the Union and the signatures of 15 or 20 men whom he said were its members. No official investigation of the union was made prior to its being admitted to registration in the Cayman Islands, whose registrar of trade unions testified that company domination does not disqualify a union from registering in the Cayman Islands. There is no record of any activity on the part of the union prior to its registration.

The SS Ore Monarch's articles of agreement with the members of its crew require all such as are eligible to join the Global Seamen's Union within thirty days after signing the articles.

On January 5, 1960, the Secretary of Universe Tankships, Inc., sent to the Captain of the SS Ore Monarch a letter cautioning the members of the crew not to join any American unions and to abide by the contract between Global Seamen's Union and Universe Tankships, Inc. The

Captain was instructed to read the letter aloud to his unlicensed men at his first opportunity outside the territorial waters of the United States and, that, he did.

The time charter between Universe Tankships, Inc., and Navios Corporation is for a term of seven years, calculated from the time of the vessel's delivery at Puerto Ordaz, Venezuela, after having been released from the builder's yard in Japan. The charter provides that all differences or disputes with respect to performance and construction of the charter "shall be determined at the port of New York in accordance with the laws of the United States." Another clause of the charter provides that "All bills of lading, receipts or other shipping documents issued hereunder shall contain an appropriate Clause Paramount substantially in the following form: 'This bill of lading or contract of carriage shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States * * *'". Payments due under the charter are to be made in United States currency and the ship is to be redelivered, unless otherwise mutually agreed, "at the last port of discharge which shall be on the U. S. Atlantic or Gulf Coast."

No evidence was introduced that the picketing was otherwise than peaceful or that it was accompanied by any violence whatsoever. The chancellor's finding to such effect, amply supported as it is by the record, must be taken on these appeals as an established fact.

If, as the court below held, this case involves a labor dispute within the jurisdiction of the National Labor Relations Board, then the picketing and other activities of the defendants are either protected by Section 7 of the National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, as amended, 29 U. S. C. A. § 157, or constitute an unfair labor practice under the standards of Section 8(b) of the same statute.

In *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959), the United States Supreme Court declared that, "When an activity is arguably subject to § 7

or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

It seems abundantly plain that, on the rationale to be deduced from Supreme Court decisions in cognate relation, the activity of the defendants in the instant case is, at least, *arguably* subject to Sections 7 or 8 of the National Labor Relations Act, and, that, accordingly requires us to "defer to the exclusive competence of the National Labor Relation Board" over the subject matter.

The appellants argue, however, that the picketing and other activities of the defendants involve an interference with the internal economy of a foreign ship and its foreign workers within the restrictive scope of the decision in *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957). We think the two cases are clearly distinguishable on their material facts.

In the *Benz* case a Liberian ship berthed at Portland, Oregon, for repairs, the loading of a cargo of wheat and the completion of an insurance survey. The crew was composed entirely of nationals of countries other than the United States, principally Germany and Great Britain. The crew members had agreed to serve on a voyage originating at Bremen, Germany, for a period of two years, or until the vessel returned to a European port. They had signed on under a British form of articles of agreement which was opened at Bremen. The members of the crew went on strike, while at Portland, demanding that their term of service be reduced, their wages increased, and more favorable conditions of employment established. To voice their grievances, they picketed the vessel. Six days later they designated the Sailors' Union of the Pacific, an American union, as their collective bargaining representative. The striking crew, or others acting for them, continued the picketing for almost a month. The day after the crew withdrew its picket line, the Sailors' Union of the Pacific began picketing

the ship. It was enjoined by the United States District Court after the shipowner filed suit for an injunction and damages. Subsequently, two other American unions picketed the ship and, in turn, were enjoined by the court.

At the trial of the *Benz* case, the District Court found, as stated in the opinion for the Supreme Court at page 141, "that the purpose of the picketing 'was to compel the [shipowner] to re-employ' the striking members of the crew for a shorter term and at more favorable wage rates and conditions than those agreed upon in the articles." In holding that the National Labor Relations Board did not have jurisdiction of this dispute, the Supreme Court said (page 142): "It should be noted at the outset that the dispute from which these actions sprang arose on a foreign vessel. It was between a foreign employer and a foreign crew operating under an agreement made abroad under the laws of another nation. *The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing.*" (Emphasis supplied.)

The facts of the instant case, as we have hereinbefore recited them, reveal many and vital American connections involved in the controversy and not merely that it "erupted while the ship was transiently in a United States port and American labor unions participated in its picketing." The case of *Marine Cooks & Stewards, AFL, v. Panama Steamship Co., Ltd.*, 362 U. S. 365 (1960), presents a factual situation much more analogous to the present than does the *Benz* case.

In the *Marine Cooks* case, supra, the owner, the time charterer and the master of a Liberian registered vessel brought suit in a United States District Court against Marine Cooks & Stewards, AFL, inter alia, asking that the union and its members be enjoined from picketing the ship in American waters and from threatening to picket shore consignees of the ship's cargo should they accept delivery thereof. The Supreme Court stated the facts as follows

(pp. 367-68): "The S. S. NIKOLOS is owned by a Liberian corporation, was time-chartered for this trip by another Liberian corporation, and all members of its crew were aliens working under employment contracts made outside this country. There was no labor dispute between the ship's employees and the ship. The NIKOLOS picked up a cargo of salt in Mexico and carried it to the harbor of the port of Tacoma, Washington, for delivery to an American consignee there. After the ship entered the Tacoma harbor it was met by the [American] union's boat which began to circle around the NIKOLOS displaying signs marked 'PICKET BOAT.' Later an additional sign was put on the boat reading: 'AFL-CIO seamen protest loss of their livelihood to foreign flagships with substandard wages or substandard conditions.' The union threatened to extend its picketing to the consignee of the salt should an attempt be made to berth and unload that cargo. Although the picketing was peaceful and there was no fraud, the result was that the ship could not deliver its cargo."

The District Court issued a temporary injunction, which was affirmed by the United States Court of Appeals for the Ninth Circuit, in reliance almost entirely upon *Benz v. Compania Naviera Hidalgo*, supra. The Supreme Court reversed and held that the Norris-LaGuardia Act [1] deprived the District Court of jurisdiction to issue the injunction under the circumstances shown, saying (page 370): "It is difficult to see how this controversy could be thought to spring from anything except one 'concerning terms or conditions of employment,' and hence a labor dispute within the meaning of the Norris-LaGuardia Act. The protest stated by the pickets concerned 'substandard wages or substandard conditions.' The controversy does involve, as the Act requires, 'persons who are engaged in the same industry, trade, craft, or occupation.' And it is immaterial under the Act that the unions and the ship and the consignees did not

1. Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. A., § 101 et seq.

'stand in the proximate relation of employer and employee.' This case clearly does grow out of a labor dispute within the meaning of the Norris-LaGuardia Act." (footnotes omitted)

The National Labor Relations Act defines "labor dispute" as follows: "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[2]

The definition of labor dispute in the National Labor Relations Act is identical with the definition of labor dispute in the Norris-LaGuardia Act,[3] except that the latter Act does not include the word "tenure" and uses the conjunctive phrase, "whether or not", instead of the more simple "whether." It follows, therefore, that if the facts of a case constitute a labor dispute within the meaning of the Norris-LaGuardia Act, they also constitute a labor dispute within the meaning of the National Labor Relations Act. Because the facts in the instant case are in all material respects similar to the facts in *Marine Cooks & Stewards, AFL, v. Panama Steamship Co., Ltd.*, supra, it necessarily follows that this case involves a labor dispute within the meaning of the National Labor Relations Act.

In the *Marine Cooks & Stewards* case, the Supreme Court distinguished the *Benz* case as follows in footnote 12 at page 371: "Unlike the situation in the *Benz* case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for

2. Act of July 5, 1935, c. 372, Section 2(9), 49 Stat. 449, as amended, 29 U. S. C. A. § 152(9).

3. Section 13(c), 29 U. S. C. A. § 113(c).

themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in *Benz. Though the employer here was foreign, the dispute was domestic.*" (Emphasis supplied.)

On similar facts in the instant case, then, we have a labor dispute within the meaning of the National Labor Relations Act which is domestic. It is all the more domestic in view of the many American connections revealed by the evidence taken in the court below. Because the present case involves a domestic labor dispute which affects commerce between a foreign country and a State, the complained of activity of the defendants is arguably subject to Sections 7 or 8 of the National Labor Relations Act. The National Labor Relations Board, therefore, has exclusive primary jurisdiction of the dispute.

This conclusion is confirmed by the fact that in *Peninsular & Occidental S. S. Co.*, 42 LRRM 1113 (1958), decided subsequent to the *Benz* case, the National Labor Relations Board took jurisdiction of a representation proceeding involving two ships registered in Liberia, owned by one Liberian corporation and time chartered by another Liberian corporation. The Liberian corporation which owned the ships was wholly owned by an American corporation. The Board said, in its ruling, that "* * * the Florida and Southern Cross may not properly be considered for jurisdictional purposes as foreign vessels. To be sure, they are nominally owned by Liberian corporations which pay a tonnage tax upon the ships to the government of Liberia and are registered under the laws of that nation. However, the ships have never been in Liberian waters and are under the complete operational control of a domestic corporation." Neither should it make any difference whether a foreign registered ship is under the control of a domestic corporation or of individual United States citizens, as in the present case.

In *Eastern Shipping Corp.*, 44 LRRM 1571 (1959), which involved a foreign owned ship registered in Panama,

with a foreign crew, and with its home port in Panama, the National Labor Relations Board reversed the regional director's dismissal of a representation petition filed by the Seafarers International Union AFL-CIO. The regional director had relied upon the *Benz* case.

In *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d (2nd Cir., 1959), the United States Court of Appeals for the Second Circuit, in a Jones Act case where the injured seaman was a citizen of the British West Indies, affirmed a judgment against, significantly, the same shipowner as is involved in the instant case. The federal court did not hesitate to look behind the foreign flag which the shipowner raised in an attempt to shield itself from liability, saying that, "Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. Gerradin v. United Fruit Co., 2 Cir., 1932, 60 F. 2d 927, certiorari denied 287 U. S. 642, 53 S. Ct. 92, 77 L. Ed. 556; Carroll v. United States, 2 Cir., 1943, 133 F. 2d 690; Zielinski v. Empresa Hondurena de Vapores, D. C. S. D. N. Y. 1953, 113 F. Supp. 93; Torgersen v. Hutton, 2nd Dept. 1934, 243 App. Div. 31, 276 N. Y. S. 348, affirmed, 1935, 267 N. Y. 535, 196 N. E. 566, certiorari denied, 1935, 296 U. S. 602, 56 S. Ct. 118, 80 L. Ed. 426. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See Lauritzen, 345 U. S. at page 587, 73 S. Ct. at page 930. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the application *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the

corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act. See Zielinski v. Empresa Hondurena de Vapores, supra, 113 F. Supp. at page 95." (footnote omitted)

The appellants point out that it is the policy of the United States Government to recognize a vessel's foreign "flag of convenience." Since, however, this policy does not deter the federal courts from looking behind such flags in cases involving federal regulatory statutes like the Jones Act, for instance, it may reasonably be inferred that neither should it deter the National Labor Relations Board from looking behind such flags in cases involving the National Labor Relations Act. The above cited rulings of the National Labor Relations Board accord with this conclusion.

In our opinion, exclusive primary jurisdiction of the dispute involved in these appeals is in the National Labor Relations Board.

The orders of the court below, denying the plaintiffs' respective motions for preliminary injunctions in the several suits, are affirmed and the complaints dismissed at the appellants' costs.

Mr. Justice Bell will file a dissenting opinion.

Mr. Justice Benjamin R. Jones dissents.

DISSENTING OPINION OF JUSTICE BELL OF THE SUPREME COURT OF PENNSYLVANIA.

BELL, *J.*

There are two important questions involved: (1) has a State Court of Equity jurisdiction to enjoin the picketing and the interference with unloading and servicing of the Liberian Ship SS Ore Monarch; and (2) if so, should it do so? I would answer both questions in the affirmative. The highlights of the facts (which are set forth in the majority opinion in detail) are:

Navios Corporation, the Appellant in No. 147, is a *Liberian corporation* having its only office or place of business at Nassau, Bahamas, *British West Indies.* This corporation is in the business of transporting bulk commodities in worldwide service and for this purpose operates 37 chartered vessels of which the SS Ore Monarch, which is involved in these appeals, is one.

Universe Tankship, Inc., the Appellant in No. 148, is the owner of the Monarch which it charters to Navios Corporation. Universe owns and operates a fleet of ocean-going bulk cargo vessels in worldwide service. It is a foreign corporation which is *incorporated in Liberia,** with its principal office in Hamilton, Bermuda, British West Indies, *and has an existing labor agreement with the Global Seamen's Union.* This labor agreement was executed at *Port-of-Spain, Trinidad,* on January 6, 1960. The Articles of Agreement between Master and crew of the Monarch provide pertinently: "Between Master and Seamen in the *Merchant Service of Liberia.* . . . It is agreed that all of the rights of the parties hereto without limita-

* Universe Tankships, Inc., is wholly owned by Oceanic Tankships, S. A., a Panamanian corporation, which in turn is wholly owned by two individuals, both of whom are American citizens. Navios Corporation is a wholly owned subsidiary of the United States Steel Corporation.

tion shall be governed *by the Laws of the Republic of Liberia.* . . . Any disputes arising between the Master or owner and members of the crew regarding this agreement, *wages and/or working conditions* is to be settled by the proper competent representative of LIBERIA."

Plaintiffs' vessel the Monarch, was built in *Japan*, registered in *Liberia and flies the Liberian flag.* On this voyage it was carrying a load of Venezuelan ore from Puerto Ordaz, Venezuela, to the Fairless Works of the United States Steel Corporation at Morrisville, Pennsylvania.** Because of the limited depth of the Delaware River the Monarch docked at Philadelphia to unload a part of her cargo and consequently is temporarily in American waters. All of the Monarch's crew of 48 men are, with three exceptions, nationals and residents of foreign countries, and all except for the Master and Chief Engineer, *are members of the Global Seamen's Union. The Global Seamen's Union is an unincorporated association, registered* in the Cayman Islands, *British West Indies.*

The defendant Unions, i.e., four American national and/or international unions, waited at Pier 122 South, Philadelphia, for the arrival of the Monarch. Pickets carried in front of the entrance to the pier, signs bearing the legend "American Maritime Union Protests Unfair Labor Practices of Owners of the Ore Monarch" and "American Maritime Union Protests Substandard Wages and Working Conditions on the Ore Monarch." The Unions also caused a small boat carrying pickets with similar signs to cruise in the vicinity of the Monarch. They also caused the pickets to prevent, or attempt to prevent, the unloading of ore and the delivery of supplies and victuals to the Monarch. Even more important, two agents of the defendant, the International Longshoremen's Association, boarded the Monarch and ordered the members of its Local to cease working,

** Since this vessel was registered, she has made various voyages between South American ports and ports in the United Kingdom and Canada, as well as the United States.

which orders were promptly obeyed. Perhaps most important of all, the Unions induced three hatchmen to leave the boat and depart with them, thereby paralyzing the unloading. It is as clear as crystal that the aforesaid actions by defendants were taken for the obvious fourfold purpose (1) to induce the members of the Global Seamen's Union to break their Union contract and (2) to induce the Monarch's seamen to enter into a contract with one of the defendants in breach of their present Union contract and (3) to coerce the employers, i.e., the owner and/or the charterer of the Monarch to enter or induce the seamen to enter into a contract with one of the defendants and (4) to prevent the unloading and servicing of the Monarch until their purposes and objectives are accomplished. The Global Seamen's Union intervened as a party plaintiff and vigorously attacked the actions of the defendants and sought the same injunctive relief against the defendant Unions as was prayed for by Navios Corporation and Universe Tankships, Inc.

The lower Court refused an injunction and dismissed the complaint on the ground that the National Labor Relations Board had (primary) jurisdiction of this labor dispute and therefore the State Court lacked jurisdiction. This decision was today affirmed by this Court.

The National Labor Relations Act, as amended by the Labor Management Relations Act of 1947,* will be searched in vain for any language which would give the National Labor Relations Board jurisdiction under the aforesaid facts. The majority opinion is unable to quote or even point to any language of the Act in support of its interpretation. On the contrary, the purpose, the intent and the whole background of the Act is concerned with the industrial relationship between American workingmen and their employers—it was never intended to apply to foreign unions or to Union contracts made by foreigners with foreigners.

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* 61 Stat. 136, 29 U. S. C. § 141.

That the Labor Management Relations Act of 1947 does not apply to cases of this nature is demonstrated by *Benz et al. v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957). That case is directly in point ** and governs this case. In that case the owner of a foreign vessel (1) was granted an injunction against peaceful picketing by seamen and by three American Unions, and (2) damages were assessed against the Unions, including the three American Unions which were doing the peaceful picketing. Six months after the vessel sailed, the injunction orders were vacated and were ordered dismissed as moot and hence the appeal of the Unions only involved the right to and the amount of damages. The Supreme Court affirmed the judgment of the Federal District Court (which applied Oregon law) and, we repeat, had awarded damages to the foreign shipowner against the American Labor Unions which had been peacefully picketing the ship. In the course of its opinion the Supreme Court said (pages 139-147):

"The S. S. Riviera on September 3, 1952, sailed into harbor at Portland, Oregon, for repairs, to load a cargo of wheat, and to complete an insurance survey. It was owned by respondent, a Panamanian corporation, and sailed under a Liberian flag. The crew was made up entirely of nationals of countries other than the United States, principally German and British. They had agreed to serve on a voyage originating at Bremen, Germany, for a period of two years, or until the vessel returned to a European port. A British form of articles of agreement was opened at Bremen. The conditions prescribed by the British Maritime Board were incorporated into the agreement, including wages and hours of employment, all of which were specifically set out. . . .

"On or about September 9, 1952, the members of the crew went on strike on board the vessel and refused to obey

** This case was decided by the U. S. District Court under Oregon law which is like Pennsylvania law and contains different provisions from the Norris-LaGuardia Act and other Federal Acts.

the orders of the Master. They demanded that their term of service be reduced, their wages be increased, and more favorable conditions of employment be granted. . . . On September 15, 1952, they had designated the Sailors' Union of the Pacific as their collective bargaining representative. The striking crew or others acting for them continued the picketing from September 26, 1952, until they withdrew the picket line on October 13, 1952. The Sailors' Union of the Pacific began picketing the Riviera on October 14 and continued to do so until restrained by an injunction issued in an action for injunctive relief and damages filed against it and its principal representatives by the respondent. Two days later Local 90 of the National Organization of Masters, Mates and Pilots of America set up a picket line at the Riviera which was maintained until December 8, 1952. This picketing was stopped by a writ issued against that union and its representatives in the second action for injunction and damages filed by respondent and consolidated here. On December 10, 1952, another picket line was established at the vessel. It was maintained this time by the Atlantic and Gulf Coast District, S. I. U., until it too was enjoined on December 12 in a third action filed by the respondent in which the prayer likewise was for an injunction and damages. . . . All of the picketing was peaceful.

". . .

". . . . The only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing.

"It is beyond question that a ship voluntarily entering the territorial limits of another country subjects itself to the laws and jurisdiction of that country. Wildenhus's Case, 120 U. S. 1 (1887). The exercise of that jurisdiction is not mandatory but discretionary. . . . It follows that if Congress had so chosen, it could have made the Act applicable to wage disputes arising on foreign vessels between

nationals of other countries when the vessel comes within our territorial waters. The question here therefore narrows to one of intent of the Congress as to the coverage of the Act.

"The parties point to nothing in the Act itself or its legislative history that indicates in any way that the Congress intended to bring such disputes within the coverage of the Act. . . .

"Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. In fact, no discussion in either House of Congress has been called to our attention from the thousands of pages of legislative history that indicates in the least that Congress intended the coverage of the Act to extend to circumstances such as those posed here. It appears not to have even occurred to those sponsoring the bill. The Report made to the House by its Committee on Education and Labor . . . stated that 'the bill herewith reported has been formulated as a bill of rights both for American workingmen and for their employers.' The report declares further that because of the inadequacies of legislation 'the American workingman has been deprived of his dignity as an individual,' and that it is the purpose of the bill to correct these inadequacies. (Emphasis added.) H. R. Rep. No. 245, 80th Cong., 1st Sess. 4. What was said inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions.

". . .

". . . Soon thereafter several proposals were made in Congress designed to extend the coverage of the Seamen's Act so as to prohibit advancements made by foreign vessels in foreign ports. A storm of diplomatic protest resulted. Great Britain, Italy, Sweden, Norway, Denmark,

the Netherlands, Germany, and Canada all joined in vigorously denouncing the proposals. In each instance the bills died in Congress.

"And so here such a 'sweeping provision' as to foreign applicability was not specified in the Act. The seamen agreed in Germany to work on the foreign ship under British articles. We cannot read into the Labor Management Relations Act an intent to change the contractual provisions made by these parties. For us to run interference in such a delicate field of international relations *there must be present the affirmative intention of the Congress clearly expressed.* It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the Courts."

In addition to the controlling *Benz* case, are there any persuasive or controlling reasons to indicate whether Congress did or did not intend the National Labor Relations Board to have jurisdiction of questions and matters such as are herein involved? The answer is: Yes, there are two —practicalities and treaties.

This case is not just a question of whether one or more American unions can tie up the Ore Monarch which carries Venezuelan ore from Venezuela and flies the Liberian flag. This case reduced to its basic essentials, affects British, French, and all foreign ships and all foreign commerce—the sellers, the buyers, the owners, the charterers, the shippers, the consignees, the railroads, the trucking industry and all other carriers. As a necessary consequence, it likewise affects American and foreign unions and businesses and the Government of the United States. Most important of all, it *directly* affects (a) our treaties with other nations, and (b) international trade, which our Federal Government is attempting to expand, and (c) our friendship with other Countries.

From ancient times international trade has grown up like Topsy—first to promote prosperity and later to foster friendships throughout the world. In order to maintain and protect trade between nationals of different countries and later international trade from banditry and conflicting national or domestic or group interests, certain protecting principles gradually took form. This form probably first appeared in the law-merchant. The need for international understandings or agreements affecting trade on the waters of the deep became especially vital and necessary. Hence there gradually evolved the internationally recognized doctrine of freedom of the seas. This doctrine presented, from time to time, problems which were approached or decided differently by different Nations at different times to suit their particular interests at a particular time. If a variety of tests could be adopted with each Nation establishing or applying the test which it momentarily preferred, maritime trade would be stifled, if not paralyzed. Maritime and international trade could not and cannot wait until the stockholders or the holding companies or eventually the owner (as distinguished from the registered or record owner) can be ferreted out and/or determined by Court proceedings in one or in many Nations. Consequently Nations have sought a common sign which would be visible, and easily recognizable and understandable by everyone—the Flag. For these reasons the historic doctrine of the flag (of registry) has been internationally recognized for over a century: *Wildenhus' Case*, 120 U. S. 1; *United States v. Flores*, 289 U. S. 137; *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138; *Lauritzen v. Larsen*, 345 U. S. 571, 584; Article V of the Geneva Convention on the High Seas of 1958, which was ratified by the United States Senate on May 26, 1960; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultive Organization*, I C. J. Reports 1960, page 150. In an opinion in connection therewith rendered on June 8, 1960, the International Court of Justice recognized that the registry and the flag of Li-

beria are entitled to the same national status which is accorded the registry and the flag of any other Nation. These are likewise the views of the Attorney General of the United States and of the Secretary of State of the United States and of the Secretary of Defense of the United States as presented to the National Labor Relations Board by the United States Intervener as Amicus Curiae in the very recent case of West India Fruit and Steamship Co., Inc., et al., and three unions.

Confronted with this historical background * and with the knowledge which every Congressman undoubtedly possesses—namely, that unless immediate and permanent relief were granted in this class of case, irreparable damage and disastrous international repercussions were inevitable—it is inconceivable to me, as it has been to the Attorney General and to the Secretary of State of the United States (see infra) that Congress intended to oust the historical jurisdiction of Courts of Equity in this maritime class of cases where damage is so obvious, so swift and so irreparable, and to vest jurisdiction as if it were a mere domestic matter or a domestic labor dispute in the tortoiselike processes of the National Labor Relations Board.**

The majority in order to find jurisdiction only in the National Labor Relations Board attempt to pierce the corporate veil of all the holding companies and find that the

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* The enormous damage to plaintiffs and interveners which is mounting daily has necessitated this as well as the pertinent principles and authorities to be presented in capsule form.

** My sympathies are naturally entirely with American workers such as are represented by the defendant Unions, because they have become unemployed or are threatened with unemployment and distress by our National policy of more and more billions for foreign aid. For years this foreign aid was both wise and necessary, but many non-communist Countries have, with the help of our enormous financial non-military aid, recovered to such an extent that they are now flooding our Country with cheaply made foreign goods and creating vast unemployment. However, that policy is a matter for Congress and the President of the United States and not for Labor Unions, or Labor Relations Boards, or Courts.

vessel, by virtue of the ultimate stock ownership, is owned by American citizens. In the first place, for reasons hereinabove set forth, this is irrelevant—in these cases they cannot tear the flag from the masthead. In the next place, it would avail them nothing because of our treaty with Liberia.

Article VI, Clause 2, of the Constitution of the United States proclaims that "all Treaties made . . . under the Authority of the United States, shall be the Supreme Law of the Land and the Judges in every State shall be bound thereby."

The nationality of the Ore Monarch is *Liberian*, and under the applicable treaty and the Constitution of the United States, as well as settled principles of International and Maritime Law, she must be treated as such. Article XV of the Treaty of Friendship, Commerce and Navigation of August 8, 1938 *, between the United States and the Republic of Liberia provides:

"Merchant vessels and other privately owned vessels *under the flag* ** of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, *both within the territorial waters of the other* High Contracting Party and on the high seas, *be deemed to be the vessels of the Party whose flag is flown.*"

As the Supreme Court of the United States stated in *Lauritzen v. Larsen*, 345 U. S. (supra), page 584 (1953):

". . . the most venerable and universal rule of maritime law . . . is that which gives cardinal importance to

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* 54 Stat. 1739 (1941), TIAS No. 950. This same or a similar provision is also found in the Treaties of Friendship, Commerce and Navigation which the United States has entered into with the Federal Republic of Germany, 7 UST 1839, TIAS No. 3593 (October 29, 1954); Honduras, 45 Stat. 2618 (1929), TIAS No. 764 (December 7, 1927); Iran, 8 UST 2063, TIAS No. 2863 (April 2, 1953); Japan, 4 UST 2063, TIAS No. 2863 (April 2, 1953); The Netherlands, 8 UST 2043, TIAS No. 3942 (March 27, 1956); and Nicaragua, 9 UST 449, TIAS No. 4024 (January 21, 1956).

** Italics throughout, ours.

the law of the flag. Each state under International Law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. *The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registered state.*"

This principle was recognized long ago in *Wildenhus' Case*, 120 U. S. 1 (1887), and followed in *United States v. Flores*, 289 U. S. 137 (1933). In addition, Article 5 of the Geneva Convention on the High Seas of 1958 (which was ratified by the United States Senate on May 26, 1960) provides pertinently:

"1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. *Ships have the nationality of the State whose flag they are entitled to fly.*

. . .

"2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect."

And, in an advisory opinion, the International Court of Justice recognized that the registry and flag of Liberia are entitled to the same national status accorded the registry and flag of any other nation: *Constitution of the Maritime Safety Committee of the Intergovernmental Maritime Consultive Organization*, ICJ Reports 1960, page 150.

As the Attorney General of the United States stated in his brief as Amicus Curiae before the National Labor Relations Board, in the matter of *West India Frait and Steamship Company, Inc.*, supra:

"Another consideration compelling the recognition of the international law principle that the nationality of a ship is determined by the flag she flies is the fact that the principle is incorporated in various treaties of the United States

with other nations. Honduras and Liberia, nations whose flags are flown on ships involved in these proceedings, have treaties with the United States, providing in essence that vessels flying their flags and carrying papers as required by their laws in proof of nationality must be recognized by the United States as ships of the flag-flying country within the territorial waters of this country. These provisions, or comparable ones, are common to a number of Treaties of Friendship, Commerce and Navigation which the United States has entered into with other friendly foreign nations, such as The Netherlands, Nicaragua, Iran, the Federal Republic of Germany, and Japan.

". . .

"A refusal to treat merchant vessels flying the flag of Liberia and Honduras as vessels of those nations would be in direct conflict with our treaty obligations and would, as the Under Secretary of State has pointed out in his letter of October 27, 1960, to the Attorney General, create serious difficulties in our foreign relations not only with nations signatory to these treaties but with other nations, such as Panama, which would be entitled to interpret a refusal to recognize the flag of the ship as a violation of the rules of international law upon which there had been mutual reliance."

"The flag rule of international law accords all nations equal status without discrimination and the flags of small nations such as Honduras, Liberia and Panama are entitled to the same recognition as those of the flags of such great maritime nations as the United States, Britain, France, and Germany. . . .

"A general application of the Taft-Hartley Act to ships flying the flags of Liberia, Honduras, and Panama would have far-reaching effects upon the internal economy of the ships, would displace the labor relations policies of the flag states as well as labor unions organized under their laws

and would prejudice the foreign relations of the United States with these independent nations. In such event the flag nations involved would consider assumption of jurisdiction by the Board to be an unwarranted intrusion into their own domestic matters.

"It is difficult to conceive of a greater prejudice to maritime commerce and the foreign relations of the United States than attempts of administrative agencies of the United States or its courts to distinguish between nationality flags upon the basis of the internal legislation of the flag state fixing the conditions for the grant of its flag or other comparable factors."

The Secretary of Defense by letter dated October 26, 1960 also requested the Attorney General to intervene in the cases pending before the National Labor Relations Board and point out to the Board the vital necessity of having "ships flying the flags of Liberia, Panama and Honduras . . . . available for United States usage . . . during periods of national emergency" in accordance with agreements made by the United States with those countries. The Secretary of Defense said, inter alia: "In my considered judgment the subjection of these foreign flag vessels to the jurisdiction of the United States Labor Management Act would very likely have the effect of driving them to registration under the flags of other nations . . . and under such registries these ships would no longer be available for the emergency use of the United States . . . . with consequent loss of control over a vital resource by the United States in the event of a national emergency."

An analysis of *Marine Cooks et al. v. Panama Steamship Co.* and *San Diego Building Trades Council v. Garmon* and the other decisions of the Supreme Court upon which the majority relies will demonstrate that they are, because of their facts and/or a different Congressional Act, clearly distinguishable.

It is clear that the National Labor Relations Board does not have jurisdiction and that the Court of Common Pleas of Philadelphia (sitting in Equity) where the complaint was filed, does have jurisdiction. It is even clearer that the lower Court should enter the injunction prayed for. Even if the picketing in this case, in spite of taking the three hatchmen off the boat, is considered peaceful, the appellees (labor unions) continue under the delusion that *all peaceful* picketing is lawful. Of course that is not the law. It is well settled that a State Court may enjoin peaceful picketing if it is conducted in an unlawful manner, or if one of its objects is unlawful even though it is not the sole object: *International Brotherhood of Teamsters Union, Local 309 v. Hanke*, 339 U. S. 470; *Building Service Employees International Union, Local 262 v. Gazzam*, 339 U. S. 532; *Wilbank v. Chester & Delaware Counties Bartenders, Hotel & Restaurant Employees Union*, 360 Pa. 48, 50, 60 A. 2d 21, 22; *Phillips v. United Brotherhood of Carpenters and Joiners of America*, 362 Pa. 78, 82, 66 A. 2d 227, 228; *Wortex Mills, Inc. v. Textile Workers Union of America, C. I. O.*, 369 Pa. 359, 369, 85 A. 2d 851, 857; *Sansom House Enterprises, Inc. v. Waiters & Waitresses Union, Local 301*, A. F. L., 382 Pa. 476, 480, 115 A. 2d 746, 748; *Anchorage, Inc. v. Waiters & Waitresses Union*, 383 Pa. 547, 119 A. 2d 199; *Garner v. Teamsters, Chauffeurs & Helpers, Local Union No. 776*, 373 Pa. 19, 22, 94 A. 2d 893, 895; *Baderak v. Building & Construction Trades Council*, 380 Pa. 477, 482, 112 A. 2d 170, 173; *West Penn Township School District v. International Brotherhood of Electrical Workers*, 396 Pa. 408, 145 A. 2d 258; *Northampton Area Joint School Authority v. Building & Construction Trades Council*, 396 Pa. 565, 152 A. 2d 688; Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 302, § 4(a), (b).

It is clear that defendants have violated (a) the fundamental law of the Land as well as (b) the law of Pennsylvania, and (c) that their unlawful objects, conduct and activities have caused and are causing plaintiffs and buyers

and carriers irreparable damage * and their conduct is in violation of our international treaties and will likely injure our friendly relationships with many other countries. In my judgment plaintiffs have made out a case clearly requiring the issuance of an appropriate injunction.

For each and all of the aforesaid reasons, I dissent.

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* During the three weeks following October 21, 1960, twelve vessels flying a foreign flag have already been diverted from the Port of Philadelphia, resulting in a loss of approximately 405,000 tons of ore to this Port. The loss to the Port, to the shippers, the buyers, the railroads, and other carriers has not been estimated, but is obviously tremendous.

APPENDIX B.

IN THE COURT OF COMMON PLEAS No. 1.

NAVIOS CORPORATION, *Plaintiff*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff*, *v.* NATIONAL MARITIME UNION OF AMERICA, ET AL., *Defendants.*	September Term, 1960. No. 2065. In Equity.
UNIVERSE TANKSHIPS, INC., *Plaintiff*, GLOBAL SEAMEN'S UNION, *Intervening Plaintiff*, *v.* NATIONAL MARITIME UNION OF AMERICA, *Defendants.*	(Transferred from C. P. 4) September Term, 1960. No. 2068. In Equity.

ADJUDICATION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA.

November 7th, 1960.

GRIFFITHS, *Chancellor.*

These cases came on for hearing on an application for a preliminary injunction on Friday, October 28, 1960. Dur-

ing the course of the hearing, which continued on Monday, October 31st, and on November 1st and 2nd, the parties agreed that the hearing be considered a final one, in order to expedite the litigation. The Court also allowed the application of the Global Seamen's Union to intervene as a party plaintiff.

Defendants have filed Preliminary Objections to the Complaint, which are herein discussed.

The Complaints aver that the time charterer, Navios, and Universe, owner, of the S. S. Ore Monarch, are grieved by actions of defendants in picketing at Pier 122 South. The Complaints also seek damages for such picketing.

Answers have been filed to these Complaints, substantially denying the claims. No answer has been filed to the Complaint of the Intervening Plaintiff, but it has been agreed, for purposes of the trial and this adjudication, that such answer, if filed, would substantially deny the claims of such Complaint.

Without further discussion of the facts, which are somewhat detailed, and which will be elucidated in the Findings, based on the pleadings and proofs, we make the following

FINDINGS OF FACT.

The Court affirms the following Requests for Findings of Fact as submitted by Navios:

1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

11. Defendant, International Maritime Workers' Union, was formed to serve as an instrument or means of cooperation with International Transport Workers' Federation, a worldwide association of trade unions, of which National Maritime Union and Seafarers' International Union are members, to resist the trend toward registration of ships owned or controlled by American citizens under Liberian and certain other foreign flags (N. T. 255-283, 339-340).

The Court affirms the following Requests for Findings of Fact as submitted by Navios:

13, 14, 18, 19, 21, 22, 24, 25 and 26.

27. When the signalmen stopped working and left the SS Ore Monarch, the crane operators, whom they had been directing, also stopped working and unloading of the vessel ceased and has not been resumed (N. T. 123-124).

The Court affirms Request for Finding of Fact No. 1 as submitted by Universe.

(The rest of the Requests of Universe are substantially the same as those of Navios.)

The Court affirms Request for Finding of Fact No. 1 as submitted by Global.

The Court affirms the following Requests for Findings of Fact as submitted by the defendants:

1. (except (a) thereof), 2, 3, 4, 5, 6, 9, 10, 13 and 14.

In addition the Court makes the following Finding of Fact:

A. The general subject matter of this dispute has been submitted to N. L. R. B. in another case by I. M. W. U., one of the Defendants herein, against Universe, one of the Plaintiffs herein.

The above referred to Requests for Findings of Fact which the Court has affirmed are adopted by the Court as its Findings of Fact and incorporated herein by reference. Ordinarily they would be separately written into the Adjudication but because of the lengthy Requests and a desire of the parties and counsel that the Court expedite its Adjudication (which we are doing by filing the same within two days after briefs and Requests were submitted to us) we are following this unusual method.

DISCUSSION.

Under recent law the preemption doctrine has undergone some radical changes. State power in many fields has been, in effect, cancelled. This now seems to be true whether State law is consistent or inconsistent with National law. The supremacy clause of the United States Constitution (Art. VI, Sec. 2) and its necessary implications requiring a conflict or State exclusion before the Sovereign State is deprived of jurisdiction, had been whittled away to practically nugatory effect. We must recognize and follow these changes in the law, as we are mandated to do under the doctrine of judicial subordination. In the light of the above comment we proceed with an analysis of the applicable law.

Marine Cooks & Stewards, AFL, etc. v. Panama Steamship Company, Ltd., 362 U. S. 365; 80 S. Ct. 779, decided April 18, 1960, has facts practically identical with the facts in the case at bar. There Mr. Justice Black stated the facts as follows (page 782):

> "The S. S. Nikolos is owned by a Liberian corporation, was time-chartered for this trip by another Liberian corporation, and all members of its crew were aliens working under employment contracts made outside this country. There was no labor dispute between the ship's employees and the ship . . . After the ship entered the Tacoma harbor it was met by the union's boat which began to circle around the Nikolos displaying signs marked 'PICKET BOAT.' Later an additional sign was put on the boat reading: 'AFL-CIO seamen protest loss of their livelihood to foreign flag ships with sub-standard wages or sub-standard conditions.'"

In the *Marine Cooks Case*, the Norris-LaGuardia Act was applied, which, of course, is applicable in federal and not state courts. Nevertheless the factual issues there

presented and answered are just as valid here. Of these issues, Mr. Justice Black stated:

> "It is difficult to see how this controversy could be thought to spring from anything except one 'concerning terms or conditions of employment,' and hence a labor dispute within the meaning of the Norris-LaGuardia Act. The protest stated by the pickets concerned 'sub-standard wages or sub-standard conditions.' The controversy does involve, as the Act requires, 'persons who are engaged in the same industry, trade, craft or occupation.' And it is immaterial under the Act that the unions and the ship and the consignees did not 'stand in a proximate relation of employer and employee.' This case clearly does grow out of a labor dispute within the meaning of the Norris-LaGuardia Act."

The term "labor dispute" has the same definition in the *Norris-LaGuardia Act* as in the *Taft-Hartley Act* or *Labor Management Relations Act of 1947* (29 U. S. C. A., Sec. 113 and Sec. 152, respectively). It is defined as follows:

> "The term 'labor dispute' includes any controversy *concerning terms or conditions of employment*, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*" (Emphasis supplied.)

If the *Marine Cooks Case* was a "labor dispute" surely so is the case at bar.

The case now before us concerns the preemption by federal law under the *Labor Management Relations Act of 1947*, as amended, hereinafter sometimes referred to as the *Act of 1947*, as amended.

Before we get to this consideration, however, we are faced with the contention of the Plaintiffs that *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138, 77 S. Ct. 699 (1957) controls. While it is true that *Benz* was concerned with the jurisdiction of the state court, the same question as is now before us, the facts of *Benz* were different. As stated in *Marine Cooks Case* (page 783):

> "The question in the Benz Case was whether the Labor Management Relations Act of 1947—governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters."

And again, in footnote 12, on page 784:

> "Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on the behalf of the foreign employees as in Benz. Though the employer here was foreign, the dispute was domestic."

In the case at bar the picketing was not, as in *Benz*, as an act of sympathy for a strike of foreign seamen abroad [*sic*], but was in fact as in *Marine Cooks*, because of interest in preserving job opportunities for themselves in this country. In both *Benz* and *Marine Cooks* the employer was foreign, but in *Marine Cooks* the Supreme Court said the dispute was domestic. Under almost identical facts with *Marine Cooks* the case at bar is certainly domestic.

The language in *Marine Cooks*, on page 784 is, therefore, certainly applicable here:

"Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not, as they passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes. As we pointed out in the Benz case, the ship that voluntarily enters the territorial limits of this country subjects itself to our laws and jurisdiction as they exist."

The Navios voluntarily entered our territorial limits and has subjected itself to our laws and jurisdiction as they exist.

We come, then, to the question whether the federal field has preempted this dispute. If federal law has excluded state jurisdiction, the case would be cognizable under the Act of 1947, as amended, and a temporary injunction could only issue out of the U. S. District Court and then only upon application of the N. L. R. B., *29 U. S. C. A. 160(j)*.

On April 20, 1959, the Supreme Court of the United States handed down a sweeping decision in the *Second Garmon Case*, i.e., *San Diego Building Trades Council et al. v. Garmon et al.*, 359 U. S. 236. There the state court was prohibited from awarding damages for peaceful picketing which violated state law. The Court quoted (pp. 242, 243) from *Garner v. Teamsters Union*, 346 U. S. 485, 490-491, as follows:

"Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substan-

tive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rule of substantive law . . . Garner v. Teamsters Union, 346 U. S. 485, 490-491."

The Court then proceeded to state (page 245):

"It is not for us to decide whether the National Labor Relations Board would have, or should have, decided these questions in the same manner. When an activity is arguably subject to Sec. 7 or Sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

The *Second Garmon Case*, therefore, has given as a test of federal jurisdiction, the "arguably subject" yardstick. No longer are the necessary implications of the constitutional supremacy law applicable; nor need there be a Congressional Act excluding state jurisdiction. Duplication of federal law, or consistent or inconsistent legislation cases are no longer the standard, so long as this case is the law, with its "arguably subject" test.

After the *Second Garmon Case* of April 20, 1959, the *Landrum-Griffin Law*, with its preemption section, (701(a)), became effective, on September 14, 1959, Pub. L. 86-257, Title VII, Sec. 701(a), 73 Stat. 541. This section provides as follows (29 U. S. C. A. Sec. 164(c), 1959 Supp.):

"(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class

or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

"(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes *over which the Board declines*, pursuant to paragraph (1) of this subsection, to assert jurisdiction." (Emphasis ours.)

Thus we have Congressional endorsement of preemption, and after the *Second Garmon Case*. This Law is tantamount to acceptance by Congress of the "arguably subject" doctrine. Now, before a State Court can take jurisdiction of a peaceful picketing case which is not "a merely peripheral concern of the Labor Management Relations Act" (*Garmon*, p. 243), the N. L. R. B. must first have declined jurisdiction.

Significantly, the general subject matter of this dispute has been submitted to the N. L. R. B. in another case filed April 6, 1960, against Universe by the I. M. W. U. Further, in Case Nos. 15-CA-1454, 12-CA-255, 12-RC-415 and 2-RC-10379, before the N. L. R. B. involving this general subject matter, the Attorney General of the United States has asked leave to intervene and Plaintiffs have cited this action in support of their case now before us. These case incidents lend strength to the cogency of the preemption section of the *Landrum-Griffin Law* as applied to the present case.

As far as this piece of present litigation is concerned, the significance of "flags of necessity", or "of convenience" or "runaway ships" is a matter for the N. L. R. B. and the federal courts. *Afran Transportation Co. v. N. M. U.*, 169 Fed. Supp. 416 (S. D. N. Y. 1958) denied an injunction in such a situation involving American owners of foreign companies; whereas *Fianza Cia Nav. S. A. v. Benz*, 178 Fed. Supp. 243, 246 (D. Ore. 1959), did not follow *Afran*, where there was no evidence of American ownership of foreign vessels. This might be a line of analysis the federal courts will follow.

We, therefore, concluded jurisdiction in this case lies exclusively within the federal system of law, unless the N. L. R. B. declines jurisdiction, a fact which has not taken place. We have, therefore, not acted on Requests for Findings of Fact and Conclusions of Law which are not relevant to this issue. Nor have we considered other arguments advanced by counsel for any of the parties, as such was not necessary to a decision in the case.

The Court makes the following

CONCLUSIONS OF LAW.

1. The picketing presently engaged in is peaceful, unaccompanied by violence of any nature.

2. The dispute between Plaintiffs and Defendants is a labor dispute of a domestic nature.

3. Exclusive jurisdiction of the subject matter of the dispute is vested in the National Labor Relations Board.

4. This Court has no jurisdiction to consider the merits of the controversy.

Wherefore, we enter the following

ORDERS.

1. The request for a preliminary injunction is dismissed.

2. Preliminary objection No. 1 of the Defendants is dismissed as moot, at this time, it having been disposed of in this Adjudication and the Decree Nisi.

3. The Court reserves decision on Preliminary Objections Nos. 2 and 3 of the Defendants, pending final disposition of the Decree Nisi herein entered.

DECREE NISI.

And now, this 7th day of November, 1960, the Complaints of Navios Corporation and Universe Tankships, Inc., Plaintiffs, and of Glob[illegible] Seamen's Union, intervening plaintiff, are dismissed.

The Prothonotary shall give notice hereof to the parties or their counsel and unless exceptions are filed within twenty (20) days from the date hereof the Prothonotary, upon praecipe of any party, shall enter this decree nisi as the final decree.

By THE COURT

/s/ GRIFFITHS,
Chancellor.

APPENDIX C.

SUPPLEMENTAL ADJUDICATION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA.

GRIFFITHS, *Chancellor* November 28, 1960

Inasmuch as an appeal has been taken in the above cases to the Supreme Court of Pennsylvania, we consider it advisable at this time to state why we did not follow the majority in the case of *Incres Steamship Company, Ltd. v. International Maritime Workers Union*, et al, Supreme Court, Appellate Division, First Dept., June 1960, No. 2750 (New York).

In the first place, the *Incres* decision holds very closely to its own facts. It goes out of its way to state this on page 4 of the typewritten opinion, as follows:

> "Quite a different case would be presented if the ships were used exclusively or largely on inland waterways, or for that matter, if one or more of the other factors mentioned were changed. This does not mean that a change in any of these factors would require a contrary result. It is that there would then be a doubtful question of applicability of the federal labor statute and the rule in *Garner v. Teamsters Union* (346 U. S. 485) and *San Diego Unions v. Garmon* (359 U. S. 236) would apply. (See, *Dooley v. Anton*, N. Y. 2d .)"

In the *Navios* case at least one major factor is different than in the *Incres* case: In *Incres* the plaintiff corporation was not American, but actually owned and controlled by Italian nationals; in *Navios* plaintiff corporation is owned and controlled by American interests. This is the same distinction between the *Afran* and *Fianza* decisions, cited on page 9 of our Adjudication.

Just as *Incres* states, if any factors were changed "there would then be a doubtful question of applicability of the federal labor statute and the rule in *Garner v. Teamsters*

Union—and *San Diego Union v. Garmon* (the second *Garmon* case) would apply . . . ", so in our Adjudication of November 7, 1960, we found a major factor different and applied the rule of these two cases.

In the second place, *Incres* accepts the *Benz* decision as controlling. Here the majority in *Incres* misinterpreted *Benz* and the *Marine Cooks* decisions. The majority failed to appreciate that *Benz* was a situation where American seamen struck in sympathy with the strike of foreign seamen abroad (held to be an interference with the internal economy of the ship and enjoinable) and in *Incres* as in *Navios* and *Marine Cooks*, the situation was where American seamen struck out of interest in preserving job opportunities for themselves in this country (held in *Marine Cooks* to be a domestic dispute and not enjoinable). It is this failure in properly interpreting the facts of the *Benz* and *Marine Cooks* decisions that is error in the *Incres* holding.

The *Incres* decision, no doubt, is now pending in the Court of Appeals of New York. The case decided by the Appellate Division, to which we refer, was heard by five justices, two of whom dissented. We did not have the benefit of the dissenting opinion, written by Presiding Justice Botein, in which Justice Stevens concurred.

By THE COURT:

/s/ GRIFFITHS,
Chancellor.

(The above was written on Saturday, November 26, and transcribed on Monday, November 28, 1960.)

APPENDIX D.

CONSTITUTION OF THE UNITED STATES.

ARTICLE VI, CLAUSE 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION WITH THE REPUBLIC OF LIBERIA

AUGUST 8, 1938, 54 STAT. 1739

ARTICLE XV, 54 STAT. 1745

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be vessels of the Party whose flag is flown.

LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

Section 7, 61 Stat. 141 (1948), 29 U. S. C. § 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain

from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) of this title.

Section 8(b)(4), 73 Stat. 542 (1960), 29 U. S. C. § 158(b)(4)

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful,

where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

APPENDIX E.

DEPARTMENT OF STATE,
Washington, October 27, 1960.

The Honorable WILLIAM P. ROGERS,
Attorney General.

DEAR MR. ATTORNEY GENERAL: This Department has been advised that the National Labor Relations Board now has pending before it four cases all involving foreign flag vessels registered under either Liberian, Panamanian, or Honduran laws. The cases pending are: *Peninsular & Occidental Steamship Company, and Seafarers' International Union* (case No. 12-CA-255); *West India Fruit & Steamship Company, and Seafarers' International Union* (case No. 15-CA-1454); *Eastern Shipping Corporation & Seafarers' International Union* (case No. 12-RC-415); *United Fruit Company & National Maritime Union of America* (case No. 2-RC-10379).

In view of the interest of the Department of State in these cases based upon the important foreign relations considerations involved and the possible bearing of existing treaties or customary international law on the question under consideration in these proceedings, the Department requests that the Attorney General intervene so as to bring to the attention of the Board certain important questions of international law and policy raised by these proceedings.

In particular the Department of State would appreciate the Attorney General's bringing to the attention of the National Labor Relations Board the various considerations which are set forth below.

The United States is a party to the Treaty of Friendship, Commerce and Consular Rights with the Republic of Honduras dated December 7, 1927, and the Treaty of Friendship, Commerce and Navigation with the Republic of Li-

beria dated August 8, 1938. Article X of the Treaty with the Republic of Honduras provides:

> Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

An identical flag recognition provision is found in Article XV of the Treaty with the Republic of Liberia.

The Department of State believes that a proper reading of these Treaties requires that vessels under the flag of Liberia and Honduras and carrying the papers required by the national laws of those countries in proof of nationality, be recognized by the United States Government or any agency thereof as having the nationality of those countries. Therefore, the Department considers that any action by the Board purporting to consider such vessels as United States flag vessels, would be subject to a charge of violation of the above international agreements.

In addition it may be noted that paragraph 1 of Article V of the Convention on the High Seas, negotiated at the United Nations Conference on the Law of the Sea, held in Geneva in 1958, provides:

> Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

This Convention was signed by the United States, and the Senate has given its advice and consent to ratification.

After the Convention comes into force as the result of ratification by the requisite number of States, all States which ratify the Convention will be entitled to the benefits of Article V.

Even pending the coming into force of the Convention, however, this provision may be taken as declaratory of the universally accepted rule of international law that a ship has the nationality of the State whose flag it is entitled to fly. This rule of customary international law is of course applicable to Liberia, Panama and Honduras as well as all other nations.

It should be noted that the rule that a ship has the nationality of the State whose flag it is entitled to fly applies equally to all States. The rule is not subject to discriminatory application, for instance, on the basis of the nature of the shipping laws or regulations of the particular State whose flag the vessel flies. Vessels flying the flags of Liberia, Panama or Honduras must in this regard receive the same treatment as the vessels of any other nation. In commenting on Article V of the Convention on the High Seas, the Senate Report on the Law of the Sea Conventions, Executive Report No. 5, 86th Congress, 2d Session, stated (at page 5) that:

> * * * under the Convention on the High Seas, it is for each State to determine how it shall exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag. The "genuine link" requirement need not have any effect upon the practice of registering American built or owned vessels in such countries as Panama or Liberia. The existence of a "genuine link" between the State and the ship is not a condition of recognition of the nationality of a ship; that is, no State can claim the right to determine unilaterally that no genuine link exists between a ship and the flag state * * *.

This position is in accord with that taken by the Department of State.

The United States Government has consistently supported the non-discriminatory application of the rule that ships have the nationality of the State whose flag they are entitled to fly as a principle of international law. Thus, this rule and the rule of jurisdiction of the flag State over such ships formed the basis for the United States support of the position of Liberia and Panama in a proceeding recently concluded before the International Court of Justice relating to the advisory opinion requested of that Court by the Assembly of the Intergovernmental Maritime Consultative Organization on the Constitution of the Maritime Safety Committee (see "Written Statement of the United States of America" in (1960) I. C. J. *Constitution of Maritime Safety Committee* (Advisory Opinion of 8 June 1960) at pages 132-141). This rule has also been recognized in decisions of international courts. See e.g. *The Muscat Dhows Case* (*France v. Great Britain*) (1905) (Hague Court Reports 96 (Scott ed. 1916); Judgment No. 9, *The Case of the S. S. Lotus* (P. C. I. J. Series A. No. 10).

The Department also considers that among the factors which the Board should properly take into account in reaching a decision in these cases are the very serious adverse effects any decision to assert jurisdiction over foreign flag ships and apply American labor laws to them might have upon United States foreign relations and accepted principles of international comity. The potentially serious international repercussions in the relations between the United States and those countries which could be created by such assertion of jurisdiction by the Board over ships flying the flags of those countries are clearly indicated by the diplomatic notes already received by the Department of State from those Governments on this subject. (Note from Ambassador of Liberia to the Secretary of State dated July 30, 1958; Note from the Ambassador of Honduras to the Secretary of State dated February 8, 1960; Note from the Ambassador of Panama to the Secretary of State dated February 11, 1960.) Copies of these notes have

previously been transmitted by the Department to the Board. (Letter from Mr. Maktos, Assistant Legal Adviser, to Mr. Kleiler dated September 26, 1958; letter from Mr. Raymond, Acting Legal Adviser, to Mr. Leedom dated April 26, 1960.) The assertion by the Board of jurisdiction over foreign flag vessels and the application to them of American labor laws would in many instances also be contrary to accepted principles of international comity.

The Department of State considers that, in the above connection, the Board should take particular note of the possibility that its assertion of jurisdiction over foreign flag vessels might evoke the enactment of defensive legislation or the taking of retaliatory action by the States affected.

Accordingly, it is respectfully requested that you bring the above matters to the attention of the National Labor Relations Board for its consideration in connection with the above-named cases now pending before it, in such form and with such supporting legal and factual material and argumentation as you may consider appropriate. The Office of the Legal Adviser of the Department of State will, of course, stand ready to assist you as you may deem desirable.

Sincerely yours,

(Signed) DOUGLAS DILLON, *Under Secretary.*

APPENDIX F.

THE SECRETARY OF DEFENSE,
Washington, October 26, 1960.

DEAR MR. ATTORNEY GENERAL: As you know, the National Labor Relations Board has under consideration four cases involving vessels registered in, and flying the flags of, Honduras, Liberia, or Panama. These are Case Nos. 15-CA-1454 (West India Fruit and Steamship Co., Inc.), 12-CA-255 (Peninsular & Occidental Steamship Co.), 12-RC-415 (Eastern Shipping Corp.), and 2-RC-10379 (United Fruit Company).

The Department of Defense does not take sides in the dispute between labor and management and has only small interest in the future defense utilization of the specific ships involved in the cases before the Board. It is, however, of great importance to the Department of Defense that the Board be cognizant of the defense aspects of ships flying the flags of these foreign nations when decisions are made which might establish broad precedents in this field.

The aggregate amount of tonnage of active United States flag shipping now available is inadequate for most emergency situations and must be augmented by shipping that can be brought under our direct control in the event of emergency. In the event of a national emergency, defense plans envisage the use by the United States of a substantial number of ships flying the flags of Liberia, Panama and Honduras. These ships are considered available for United States usage when required during periods of national emergency because:

a. The ships are registered in countries that either agree to use by the United States for emergency purposes or have no objections to such use and that permit deregistration at the option of the owner;

b. The country of registry has no governmental need for the shipping and no stated intention of emergency requisition; and

c. The owners of the shipping have made agreements with the United States Maritime Administration with respect to availability of the ships to the United States Government in the event of a national emergency.

The size and age of the foreign flag fleet available for United States emergency use is shown here in comparison with the United States Flag Merchant Fleet:

Active privately owned merchant shipping as of 27 September 1960

	U. S. flag ships		*Foreign flag ships available for U. S. emergency use*	
	Number of ships	*Deadweight*	*Number of ships*	*Deadweight*
Tanker	349	6,613,900	279	7,951,500
Cargo	628	6,900,400	175	2,718,300
Passenger/combination	41	358,700	6	28,300

Age of the ships as of 1 July 1960

	U. S. flag ships		*Foreign flag ships available for U. S. emergency use*	
	Number of ships	*Deadweight*	*Number of ships*	*Deadweight*
Built 1955-60	61	1,738,300	144	5,670,000
Built 1947-54	103	1,676,800	69	1,847,600
Built 1947 or before	897	10,840,300	261	3,231,000

The bulk of the newer ships under foreign flags subject to effective United States utilization in the event of a national emergency were built in foreign shipyards and have never flown the American flag. Although their owners have agreed to make these ships available to the United States in the event of emergency, there are no contractual provisions precluding the transfer of the ships to other registries,

and the ships can be moved to other foreign registries if it appears to the owners to be economically expedient to do so. Such movements are normally made to the registries of maritime countries of Europe. Under such registries, these ships would no longer be available for the emergency use of the United States because the laws of the European maritime nations normally prescribe definite plans for requisition by those Governments of the shipping under their flags in the event of emergency. This, of course, will result in complete control of the shipping by these nations under emergency conditions and consequent loss of control over a vital resource by the United States in the event of a national emergency.

The United States now depends on the importation by ships of huge quantities of vital raw materials. For example, more than one-sixth of our total petroleum consumption is imported, most of it by ship. The steel and aluminum industries depend to a great degree upon imported ores. We need to be assured of the control of these shipping lifelines in order to continue the flow of these vital imports in the event of a national emergency. The history of our maritime operations in two world wars and three other periods of emergency shows clearly that in a national emergency we must have the utilization of the maximum tonnage of shipping possible. Our experience in World War II and in the emergencies since that war has demonstrated the practicability and value of the concept of effective United States emergency control of ships other than those registered in the United States.

In my considered judgment, the subjection of these foreign flag vessels to the jurisdiction of the United States Labor Management Relations Act would very likely have the effect of driving them to registration under the flags of other nations. By reason of the high costs of operation of United States flag vessels, there is, in my judgment, no realistic possibility of such ships being transferred to United States registry.

In view of the importance of this matter to the national defense, it is requested that you intervene in the cases pending before the National Labor Relations Board so as to bring this letter and the considerations set out therein to its attention.

Sincerely,

(Signed) THOMAS S. GATES.

The Honorable The ATTORNEY GENERAL.